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ENVIRONMENTAL ASSESSMENT BOARD ANNUAL REPORT

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-A56

Fiscal Year
ending
March 31st
1988



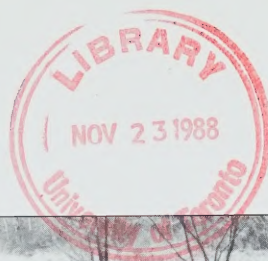
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CHAIRMAN'S MESSAGE



"The rapidity of change and the speed with which new situations are created follow the impetuous and heedless pace of man rather than the deliberate pace of nature."
from *Silent Spring*
by Rachel Carson.

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This past year has been an active one on both the national and international fronts as many countries around the world have stepped up the global assault against the ravages of industrial pollution.

Although the focal point of 1987 was the release of the report of the Brundtland World Commission on Environment and Development, there were other developments that will also have important implications in the future.

In October of 1986 the Canadian Council of Resource and Environment Ministers (CCREM) established the National Task Force on Environment and Economy to:

"initiate dialogue on environment—economy integration among Canada's environment Ministers, senior executive officers from Canadian industry, and representatives from environmental organizations and the academic community."

The Task Force issued its report in September 1987, expressing its belief that sustainable and environmentally sound economic development is essential to continued economic prosperity, both within Canada and throughout the world. This underlying theme was present throughout the report, which made 40 specific recommendations aimed at providing a framework for an integrated approach to the environment and the economy. For the first time heads of governments and leaders of industry have accepted the responsibility for continued dialogue, lending this initiative a degree of credibility and optimism which had previously been

lacking. The adoption of many of the recommendations has provided other industrialized nations with a blueprint for enhanced co-operation between governments, industry, non-government organizations and the public.

The Environmental Assessment Board continues to evolve in its role of balancing the interests of different sectors of our society.

The Board has undergone a number of changes during the last year, both administratively and in terms of membership.

In October 1987 Susan Tanner and Joan Simpson, both part-time members, left the Board and were replaced by Elaine Tracey and Dr. Paul F. Eagles for one and two year terms respectively.

Elie W. Martel of Capreol, Ontario joined the Board as a full-time Vice-Chairman in March 1988. In addition, full-time Vice-Chairmen, Robert Eisen, Q.C., Mary Munro and Grace Patterson were reappointed to further terms as was part-time member Richard Pharand, Q.C., of Sudbury. Since March 31,

1988, therefore, the membership of the Board has consisted of six full-time members, including the Chairman, and six part-time members. It is likely that the Board will require additional members later this year to enable it to handle the expected influx of major hearings in the fall.

On the administrative front, the Board has proceeded with several of the initiatives begun last year. As a result of thorough administrative reorganization and streamlining of the hearing process it is moving rapidly towards its goal of increased efficiency and service to the public.

In January 1988 the Board moved to its new offices at 2300 Yonge Street, Toronto. These have been designed to accommodate the needs of both the Board and the public. A large, fully equipped hearing room, which also serves as a meeting room for regular Board meetings, was used for the first time in late January in the course of a series of preliminary meetings for the recently begun Timber Management hearing. New library facilities provide the Board with the basic research/reference material requirements of a first class working library. With the help of independent consultants, staff recently completed a comprehensive study concerning an advanced word processing/information retrieval system, referred to in last year's Annual Report, and an integrated system should be fully operational by the early fall of this year. With this new system, counsel, public interest groups and members of the public will soon be able to gain access to Board reports, decisions and other material by means of a computer terminal which will be available for public use in one of the consultation rooms located off the main reception area.

The Board has also taken other steps to improve its administration, particularly in the area of communications. Doug Mander has joined the Board's staff as a Hearing Liaison Officer and he has been assigned to the Timber Management hearing to assist with on-site administrative matters relating to this important and complex hearing. In order to provide information to the public concerning the status of this hearing, a toll-free telephone service has been established through which callers can obtain a recorded status report that is updated on a daily basis. External communication with the Board has been made easier by the installation of a Facsimile Transceiver at its offices, and telecommunication capability with the Board's computerized information retrieval system may be possible within the near future.

The Board's Rules of Practice and Procedure were formally enacted as a Regulation under the Environmental Assessment Act in January 1988. The public consultation process undertaken by the Board in 1987 was described in detail in the last Annual Report and will therefore not be repeated here, although the Board would once again like to express its appreciation to those who participated in this important rule-making exercise. The finalized draft Rules were thoroughly reviewed by the "Rules Committee," established pursuant to the Statutory Powers Procedure Act, and received Cabinet approval shortly thereafter. The Rules are now available in a bilingual format at the Ontario Government Bookstore and the Board Offices in Toronto for a nominal charge.

Realizing that the Rules of Practice and Procedure are, of necessity, written in a somewhat technical legal form, the Board followed through with its plan for a comprehensive "Citizens' Guide" to its proceedings. This informative twenty page booklet, again in a bilingual format, is available at the Board Offices free of charge. Care has been taken to address, in layman's terms, many of the questions often raised by members of the public concerning the Board's jurisdiction and hearing procedures.

The Board has also been active in its dialogue with other tribunals. In March 1988 it hosted a Round Table discussion to which members from a number of administrative tribunals were invited. Roderick A. Macdonald, Dean of the Faculty of Law, McGill University; Professor John Evans of Osgoode Hall Law School; and Donald Brown, Q.C., of Blake, Cassels & Graydon addressed the participants on the implications of the findings of the Ouellette Commission on Administrative Tribunals and the appropriateness of tribunals interpreting their legislation in the context of the Charter of Rights and Freedoms. The lively discussion that ensued demonstrated the interest and need for further dialogue and the Board intends to host similar programmes in the future.

During the 1987 fiscal year the Board was again involved with a number of important applications.

The Regional Municipality of Halton Landfill application (Joint Board) is proceeding and should be completed later this year. Two applications relating to highways, the Highway 416 application and the Finch Avenue West Extension, were disposed of with decisions issued in July 1987 and February 1988 respectively. Several landfill applications also came before the Board and were completed during this period (Boise Cascade Canada Ltd., Quinte Sanitation Services Limited, City of North Bay, Walker Brothers Quarries Limited).

In addition, the Board established a number of funding panels to administer intervenor funding, provided by the government for both Joint Board and EAB hearings.

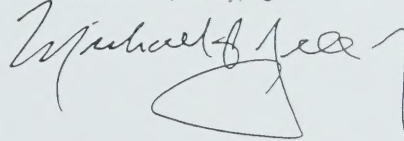
What lies ahead?

The next few months will be the busiest ever in the Board's history. As mentioned previously, the Ministry of Natural Resources Timber Management hearing commenced in Thunder Bay, Ontario in May and additional hearings will ultimately be held in some fourteen locations across the province. Although the Halton Region Landfill hearing will be winding up later this year, the Regional Municipality of Peel and the Town of Meaford and Township of St. Vincent Landfill applications (both Joint Board) will reach the hearing stage in September/October of 1988.

The TSI Trintek Systems Inc. Energy from Waste application is also scheduled to come before a Joint Board in the early fall as is the Derry Road Extension application.

In early 1989 a Joint Board is expected to begin the long-awaited Ontario Waste Management Corporation hearing, although delays have made it difficult to predict when it will reach the hearing stage. Some of the many waste management plans, or specific components of them, may come before the Board during the next few months and a number of routine applications will also have to be dealt with. Notwithstanding a dramatically increased hearing load, the Board remains resolute in its commitment to continue to be accessible to the public it serves and to discharge its legislative responsibilities in the most effective manner possible.

Michael I. Jeffery, Q.C.



Chairman

MEMBERS OF THE ENVIRONMENTAL ASSESSMENT BOARD

Alan William Roy is a part-time member from Brighton. A science graduate from Sir George Williams University, Montreal, and Queen's University, Kingston, Mr. Roy has long scientific experience in the area of fisheries protection and is currently environmental director for the Union of Ontario Indians. He was appointed to the Board in April 1987.

Grace Patterson is a full-time Vice-Chairman of the Board. She practiced environmental law with the Canadian Environmental Law Association until her appointment to the Board in 1986. She was a director of several environmental organizations, and served on the Science Advisory Board of the International Joint Commission and on the Canadian Environmental Assessment Research Council. Ms Patterson lectures on environmental law at Queen's University Law School.

Dr. O.P. Dwivedi is a part-time member from Guelph. A Professor of Political Science, Dr. Dwivedi has acted as a consultant to the Ministry of State for Urban Affairs, Environment Canada and the Law Reform Commission of Canada. His international assignments and consultancy include work for UNO, WHO and UNESCO. In 1986 he was elected President of the Canadian Political Science Association.

Elie W. Martel is a full-time Vice-Chairman of the Board and member from Capreol. Mr. Martel taught history until 1967, when he was elected to the Legislative Assembly. Mr. Martel served as the NDP member for Sudbury East until 1985 and was House Leader for his party from 1978 to October 1985. As a member he did extensive work on environmental issues. Mr. Martel is the author of two major reports on safety in the workplace. He was appointed to the Board on March 9, 1988.

Dr. Paul F.J. Eagles, MCIP is a part-time member from Cambridge. Dr. Eagles holds a B.Sc. in Biology, an M.Sc. in Zoology and Resource Development from the University of Guelph and a Ph.D. in Urban and Regional Planning from the University of Waterloo, where he is presently a faculty member. Dr. Eagles has published extensively on applied ecology, resource management and outdoor recreation.

Richard A. Pharand, Q.C. is a part-time member from Sudbury. A bilingual Sudburian, he is the senior partner of the law firm of Pharand, Kuyek. He was a founding member of l'Association des juristes d'expression française de l'Ontario. Mr. Pharand is a member of the Advocates' Society, the Criminal Lawyers Association, the Canadian Bar Association and the Sudbury Law Association.

ALAN WILLIAM ROY

GRACE PATTERSON

DR. O.P. DWIVEDI

ELIE W. MARTEL

DR. PAUL F.J. EAGLES, M.C.I.P.

RICHARD A. PHARAND, Q.C.



Robert B. Eisen, Q.C. is a full-time Vice-Chairman of the Board. He graduated from the University of Toronto in 1951 with an Honours A. in Political Science and Economics, and from Osgoode Hall Law School in 1955. He served as part-time instructor in the Bar Admission Course at Osgoode Hall and practiced commercial law from the time of his call to the Bar until his appointment to the Board in March 1981.

Anne Koven is a part-time member from Toronto. Appointed to the Board in April 1987, Ms Koven holds a Masters degree in Public Administration from Queen's University. She was Research Director of the Upper Ottawa Land-fill Site study, commissioned by the Ontario Ministry of Health, from 1981 to 1986. She has worked in the mining industry and with the Ontario Advisory Council on Occupational Health and Safety.

Michael I. Jeffery, Q.C. is a recognized authority in the administrative law field and holds an LL.M. degree in environmental law from Osgoode Hall. He is currently Co-Chairman of the Environmental Law Committee of the International Bar Association, Canadian Editor of the *Environmental and Planning Law Journal*, Editor in Chief of the *Canadian Journal of Administrative Law and Practice* and immediate past Chairman of the Council of Canadian Administrative Tribunals.

Dr. Douglas James Kingham is a full-time Vice-Chairman of the Board. He has an extensive scientific background in both physics and chemistry and has been involved in environmental management since 1968. Dr. Kingham was the Director General of the Ontario Region of Environment Canada, where he negotiated reductions of chemicals in the Niagara River, and was Canadian Chairman of the International Joint Commission's Water Quality Board.

Mary G. Munro is a full-time Vice-Chairman of the Board and a member from Burlington. She is a Registered Nurse by profession and has been active in community and environmental affairs for many years, having served on various boards and commissions. Mrs. Munro has been City Alderman, Regional Councillor and Mayor of the City of Burlington. She was appointed to the Board on September 1, 1981.

Elaine B. Tracey is a part-time member from Eganville. Mrs. Tracey was appointed to the Board on October 29, 1987. She is active in community environmental concerns and has presented briefs on waste management in her township. She is a participant in the Eganville riverfront improvement project and a past President of the Eganville and District Business Association and Secretary of Eganville's Centennial Committee.

**ROBERT B. EISEN,
Q.C.**

ANNE KOVEN

**MICHAEL
I. JEFFERY,
Q.C.**

**DR. DOUGLAS
JAMES KINGHAM**

MARY G. MUNRO

**ELAINE B.
TRACEY**



The Environmental Assessment Act

In the Environmental Assessment Act (EAA), the "environment" is defined not only as the "natural" environment but also "social, economic and cultural conditions" and "any building, structure, machine or other (man-made) device." The purpose of the Act is to provide for the "protection, conservation and wise management" of Ontario's environment.

Given this broad mandate, the Environmental Assessment Board (EAB) is empowered to approve or reject undertakings on referral of an application from the Minister. Provincial and municipal undertakings are subject to the Act, but the private sector is not included, except by special designation from the Minister.

The Board makes decisions or recommendations under several different statutes but the EAA is unique in that the applicant is required to submit an environmental assessment. This is a document describing in detail the proposed development, its predicted impacts and any mitigative measures that may follow. The assessment document must also include alternatives to the undertaking, alternative methods of carrying out the undertaking and their predicted impacts. The Board can request amendments to this assessment before approving it.

When the assessment is completed a hearing may be held, if there is a request for one, unless the Minister, using his discretion under the Act, considers that a hearing is unnecessary or would cause undue

delay. With the approval of the Cabinet the Minister can also give an exemption that dispenses with both the assessment and the hearing. This would only be given if, in the Minister's opinion, the normal application of the Act would not be in the public interest.

In addition to individual proposals, the EAA also covers class environmental assessments. An overwhelming administrative burden would be created if many smaller projects with minor impacts were processed singly, so they are assessed as a group. If necessary, individual projects in a class assessment can always be "bumped-up" and examined independently.

Many types of proposals are suitable for class assessments. Provincial and municipal road projects were among the first to be dealt with in this way, and since then there have been class EA's for a number of other applications, such as solid waste disposal projects, dams and dikes and canoe routes. The Timber Management hearing that commenced recently is a major class EA that encompasses Crown land use in several regions of Ontario.

The Environmental Protection Act

Under the Environmental Protection Act (EPA) the Board's powers are more limited than under the Environmental Assessment Act. The objective of the EPA is "the protection and conservation of the natural environment." The EAB's jurisdiction comes from Part V of the Act and relates specifically to waste management systems and waste disposal sites.

Waste management is covered by Regulation 309 of the EPA. It defines which materials constitute "waste" and prescribes standards for the location and operation of waste disposal sites and waste management systems.

Although the Act covers the approval of waste management systems and disposal sites, the Board has no decision-making powers under the EPA—this responsibility lies with the Director of Approvals. When an application for a Certificate of Approval is received the Board may be requested to hold a hearing and make recommendations to the Director. If a proposal entails the disposal of hauled liquid industrial waste or hazardous waste, or deals with amounts of waste equivalent to the domestic output of more than 1500 persons, a public hearing becomes mandatory, although the Director may dispense with this requirement in an emergency.

In its report to the Director, the Board will frequently make recommendations regarding terms and conditions of approval. These could include, for example, engineering requirements, financial guarantees, a monitoring programme and provisions for public consultation. Further details about the application of conditions of approval are given later in this report.

According to the EPA, the Board may recommend that the Director refuse to grant an approval if proposed undertaking fails to comply with the Act or

ity of its regulations, if it may create a nuisance, if it is contrary to the public interest or if it may result in a hazard to any person's health or safety.

When the Board is requested to make recommendations regarding a proposal, it prepares a report for the Director of Approvals which contains a summary of the information and views presented at each hearing, as well as its advice and reasons for that advice. Peculiar to this legislation and the Ontario Water Resources Act is the requirement that the entire board should review the draft report of the panel members who conducted the hearing; then the Board as a whole submits its report to the Director.

The Ontario Water Resources Act

Under both the Ontario Water Resources Act (OWRA) and the EPA the Board's role is merely recommendatory. It provides advice and recommendations which are considered by the Director of Approvals when he makes his decision as to whether or not the project should be issued with a Certificate of Approval.

Under the OWRA, a public hearing may be held in situations where a municipality wants to build or extend a sewage works into another municipality or a territory without municipal organization. If a municipality is proposing a sewage treatment plant in its own area, a public hearing before the EAB may also be required.

The Board's remaining mandate under the OWRA is to conduct hearings on applications for the definition and designation of areas of public water service or public sewage service.

Decision-Making and Cost-Granting Power under the Environmental Protection Act and the Ontario Water Resources Act

Amendments to the EPA and OWRA which would give the Board the power to make a decision on an application being heard by it were introduced in the legislature in the spring of 1988. If these amendments are approved by the legislature, the EAB will no longer make recommendations to the Director but the panel which heard the matter will issue a decision. This decision will be appealable to Cabinet or to the Divisional Court. In addition, the power to award costs is included under both Acts.

The Public Inquiries Act

Occasionally the Board is required by Order in Council to hold hearings under the Public Inquiries Act. This Act is meant to provide a public forum for issues that are not covered by any other Act, but that may be a matter of public concern.

The Cabinet has the authority to appoint commissioners to hold a public inquiry into any issue that may affect the good government of Ontario, the conduct of any part of the public business or the administration of justice. If the issue is environmental the EAB may be requested to conduct the hearing.

The Consolidated Hearings Act

The Consolidated Hearings Act (CHA) provides a procedural umbrella for a number of specific Acts. When the CHA is applied to environmental issues, the EAB may become part of a Joint Board with more power than it would have if conducting a hearing alone.

For example, under the Environmental Protection Act the EAB is confined to a purely advisory role, and decisions are the responsibility of the Director of Approvals. When a Joint Board conducts a hearing on the same matter, it has the power to make a decision and approve or reject the application. The appeal provisions of the CHA also supersede those of the individual Acts that it covers. On the 28th day after it is issued a Joint Board decision becomes final, unless there is an appeal to Cabinet, while a decision made by the Director of Approvals under the EPA alone can be appealed to the Environmental Appeal Board.

The CHA also has cost-granting powers that are not contained in the EAB's legislation. Joint Boards have awarded costs to intervenors in a number of hearings to date, most recently in connection with the Southwest Ontario Hydro hearings. These awards were made on the basis of the particular party's contribution to the hearing process and were not related to whether or not the outcome of the hearing reflected the position that they were advocating.

CHA hearings generally cover applications under the EAA or the EPA combined with a variety of land use planning Acts. They might involve the Planning Act, the Ontario Municipal Board Act, the Expropriations Act or the Municipal Act.



THE HEARING

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Notice for a hearing must be distributed in such a way as to reach everyone who may be affected by the proposed undertaking. This thorough dissemination is vital if there is to be a fair hearing, and it is part of the Board's mandate to ensure that there are no omissions.

Accordingly, notices are formulated to satisfy not only the legislative requirements but also the principles of natural justice. The notice is published in local and regional newspapers well in advance of the hearing. It is also mailed to anyone—municipalities and other groups as well as private individuals—who would be directly affected by the matter being assessed.

Public Information

In appropriate situations, the Board may make special arrangements to assist the public in gaining information about a hearing and the procedures to be followed. They may require the proponent to set up public information centres at convenient locations or, as they have recently in the Timber Management hearing, they may establish a telephone information service which gives recorded information about the hearing and is updated on a daily basis.

Pre-Hearing Meeting

In the more complex hearings the Board may arrange a pre-hearing meeting. This serves to identify the interested parties and settle procedural matters. It also gives the participants an opportunity to clarify their concerns and define the issues. The meetings are

convened with full notice and transcripts are taken, although no evidence is presented and no decisions are made at this stage. Pre-hearing meetings can be helpful in preparing for the hearing and speeding up the process.

Preliminary Hearing

Like a pre-hearing meeting, a preliminary hearing is convened by way of full notice, but it is a little more formal in that the Board may make decisions, generally of a procedural nature.

Both the preliminary hearing and the pre-hearing meeting can be used to:

- identify the parties and participants;
- define the issues;
- arrange for the exchange of relevant documents;
- consider the advantages of filing witness statements and interrogatories and establish a procedure for this;
- identify the witnesses and the nature of their evidence; and
- estimate the length of the hearing and, if possible, set a date for the commencement.

Witness Statements

During the hearing, when evidence of a technical nature is involved, the Board may require the preparation and exchange of witness statements. This gives each party advance information about the issues to be raised. It can also prevent distractions and delays in the proceedings and it serves to clarify the issues that are in dispute.

Interrogatories

Interrogatories—written requests for information that are put by one party to another—are often exchanged before the hearing. This is helpful in situations when, for example, a witness needs to do some research or make a calculation in order to answer a question. A lot of time can be wasted at a hearing if a witness is confronted with a question that requires him to make a complex calculation or track down an obscure document for information. Interrogatories are also useful in putting non-controversial information on the record quickly.

Interrogatories offer two main advantages:

- they enable parties to obtain information that will help them in preparing their cases; and
- they speed up the introduction of evidence as part of the hearing record.

Expert Assistance

In each of the Acts under which the Board conducts hearings there is a provision that gives the EAB the authority to hire experts to assist it. As described more fully later in this report, the Board has retained a variety of expert witnesses in recent hearings.

The Board's policy is to engage these experts on their own initiative or at the request of a party to the proceedings. The major criterion is that the witness will enhance the Board's understanding of the issues being presented at the hearing.

Costs

Although the legislation may be amended to allow cost awards, at present the EAB still only has the authority to award costs when it is part of a Joint Board. The Board considers the cost award power important in terms of making sure that all views are represented fairly and effectively at the hearing.

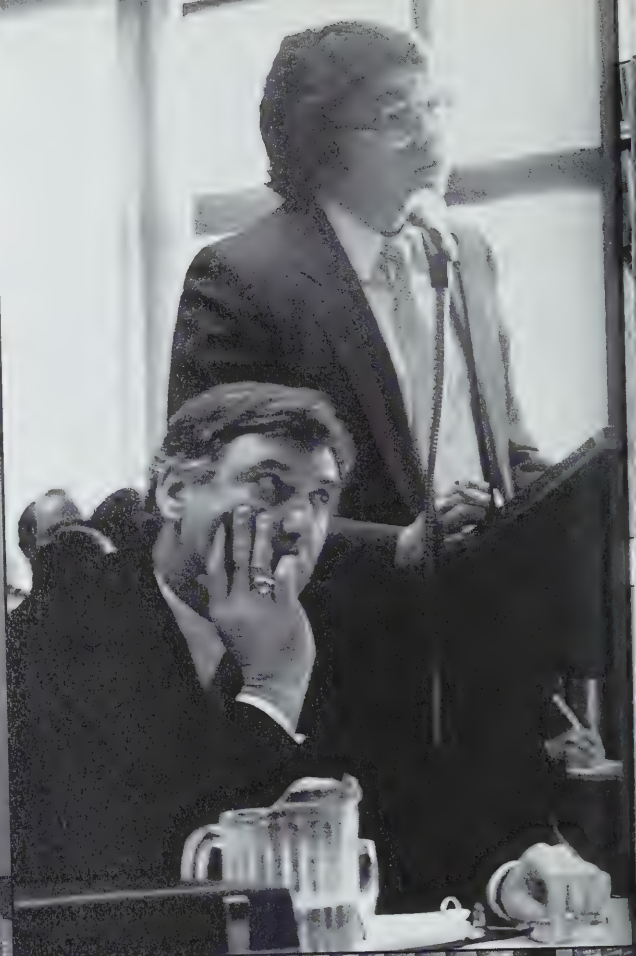
Appeal and Review of Board Decisions

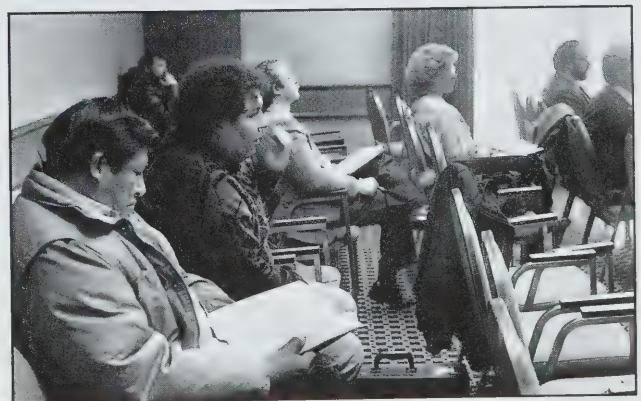
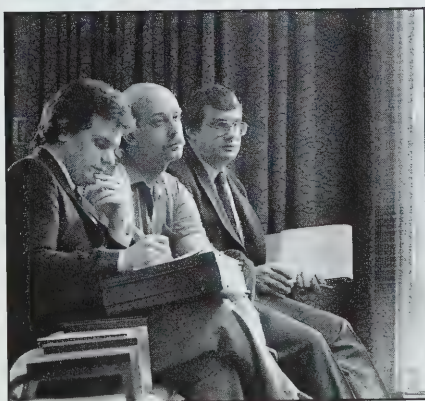
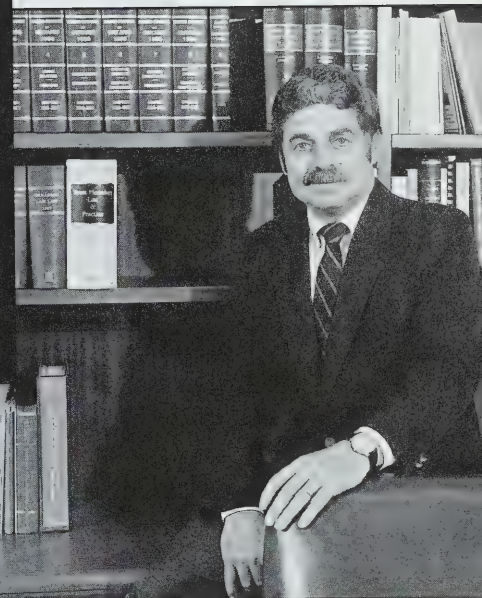
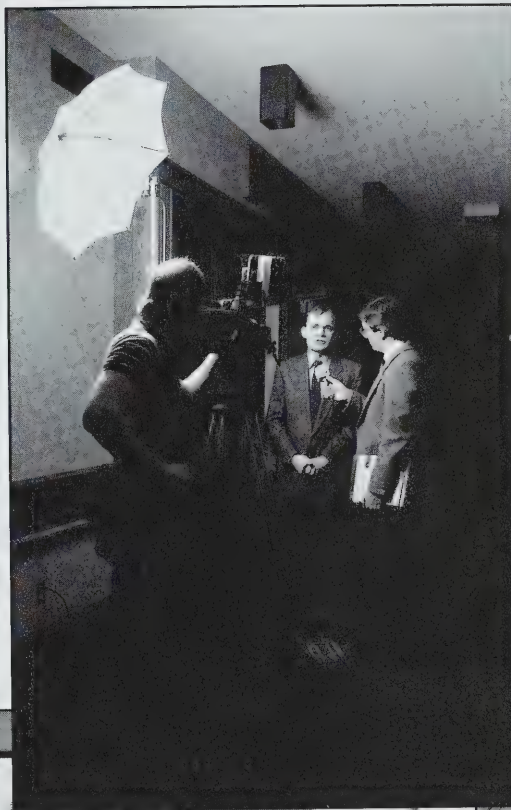
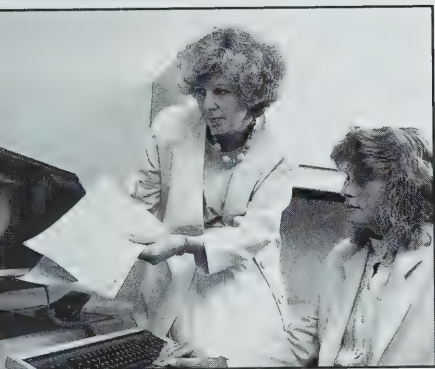
The Environmental Assessment Act and the Consolidated Hearings Act provide similar provisions for the review of EAB and Joint Board decisions. Under the EAA, the Minister may change all or part of the Board's decision or substitute one of his own. He can also require a new hearing. The CHA permits

an appeal to be made directly to Cabinet "by any person entitled to be heard at or to take part in proceedings before the Joint Board." Any appeal must normally be made within 28 days of the Board's decision.

Because the Director of Approvals is the decision-maker under the EPA and the OWRA, the Board's recommendations cannot be appealed. However, the proponent of an undertaking can appeal the Director's decision to the Environmental Appeal Board.







BOARD APPOINTED WITNESSES

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Under provincial legislation the EAB can appoint witnesses at its own hearings. This authority comes from a provision in each of the Acts covered by the Board's jurisdiction.

For example, section 18(9) of the Environmental Assessment Act reads:

"The Board may appoint from time to time one or more persons having technical or special knowledge of any matter to enquire into and report to the Board and to assist the Board in any capacity in respect of any matter before it."

This provision is duplicated, by reference, in section 33(3) of the Environmental Protection Act and section 6(3) of the Ontario Water Resources Act. It is also repeated in section 10 of the Consolidated Hearings Act, where it applies to hearings conducted by a Joint Board.

The wording of the provision is broad enough to allow the Environmental Assessment Board to engage a wide range of persons to assist it in any task that it is required to perform. However, the section has been used almost exclusively by panels of the Board to appoint expert witnesses to give testimony at hearings. Most recently such a witness was retained when, in 1987, the Municipality of Metropolitan Toronto applied under the Environmental Assessment Act for approval to construct a section of Finch Avenue West to bridge the gap between Islington Avenue and Albion Road.

At the hearing, just before the commencement of

reply evidence, the Board announced that, on its own initiative, it intended to appoint an expert in traffic and transportation to assist it. These two areas were central issues in the proponent's case. After receiving comments from the parties and particularly from the applicant, the Board adjourned the hearing and began the process of finding and retaining a suitable witness. Since it neither requested the names of candidates nor were any put forward by the parties to the hearing, the Board took it upon itself to seek out such a person without the help of the parties.

The Board's decision to appoint an expert on its own initiative follows the precedent adopted in the PCB enquiry of 1985. At previous hearings the procedure had been quite different. For example, at the Ridge Landfill hearing in 1981 and the Burlington Landfill hearing in 1984, motions for the appointment of an expert came from one of the parties and the Board requested and received suggestions as to who should be appointed. In all cases, except in the Burlington Landfill application, at least two potential candidates were interviewed before a final choice was made.

Interviews for Board appointed witnesses have been conducted by various people—Board members and counsel—at times with the Board Secretary in attendance. The latter would be expected to liaise between the Board and the candidates with regard to subsequent arrangements. The interviews provide an opportunity to present an overview of the hearing to the interviewees and also to determine more closely their qualifications, whether they harbour a bias that might disqualify them and whether there is a potential or actual conflict of interest. Such matters as fees and time scheduling are also discussed. The interviewer stresses the point that the experts are expected to consider themselves independent insofar as the evidence is concerned and to make their findings as they see fit.

In the Finch Avenue application (as in the Burlington Landfill hearing) a formal retainer document was drawn up and signed by the successful candidate and by a representative of the Board. The document requested the expert to review exhibits and transcripts of evidence and to draw up a written report on the issues set out in the terms of reference attached. That document, together with the terms of reference, was made an exhibit to the hearing.

Once appointed, the expert had no direct contact with the Board and all communications between the two were conducted either in open forum at the hearing or through the Board Secretary. Conversations between the Board Secretary and the witness were limited to arrangements regarding the hearing and procedural matters.

The expert's report was circulated among all the parties to the hearing as soon as it was received by the Board. The Board does not treat a report provided by its witness as its own, nor is the report given any preferential treatment. It becomes an exhibit at the hear-

ing because the Board invariably brings out in open forum any matter having evidentiary value. The report itself is subjected to the same scrutiny by the parties and by the Board as any other piece of evidence.

At the Finch Avenue hearing the Board appointed counsel to act on behalf of its witness. While the Board could have dispensed with counsel and conducted its own oral examination of the witness, it concluded that counsel should represent him, assist in the oral presentation of the evidence and prepare him for cross-examination. The Board was of the opinion that since the applicant's witnesses had the benefit of counsel so should the Board's witness. In addition it felt that an active role on its part during examination-in-chief, cross-examination and re-examination might be perceived by the parties as identification with and even adoption of the opinions of the Board's expert when, in fact, the Board did not take a position on the witness's evidence at that stage in the process.

Both in his report and in his testimony at the hearing the witness conducted himself as an independent expert. His qualifications as an expert in the field of transportation/traffic were presented to the hearing and the parties were afforded ample opportunity to question his expertise and any bias that might have the effect of diminishing the value of his evidence. As anticipated, his testimony elicited a vigorous response from the applicant in both cross-examination and reply evidence.

The Manville Canada Inc. application in 1983 saw a different and innovative use made of section 18(9) of the Environmental Assessment Act. In that case two ratepayers' associations had retained a number of expert witnesses prior to the commencement of the hearing. These witnesses carried out some preliminary investigations into the matters on which they were to give evidence at the hearing.

At the opening of the hearing, counsel for the associations made an application to have the experts appointed as Board witnesses, to be remunerated by the Board for all their work in connection with the application, including their pre-appointment work.

During the course of the hearing the Board acknowledged the contribution of the associations' witnesses in helping to provide a better understanding of the issues and appointed them as its own experts. In giving reasons for the appointment the Board stressed that the witnesses' evidence was of assistance to it but also took into account the fact that the ratepayers' associations were in need of financial help. The request for remuneration for pre-appointment work was partially successful in that the Board ordered remuneration to run from the date of the application for appointment, namely the commencement of the hearing. This excluded pre-hearing work.

In the Burlington Landfill application, a citizens' group also applied to have its expert appointed as a Board witness. Again the Board was of the opinion that the evidence of the expert would contribute to

the better understanding of the issues. It also considered the financial need of the citizens' group. The Board was satisfied that, in this instance, the witness would be able to act independently and without favour. By the end of the hearing, his opinions with regard to the application had diverged considerably from those held by the citizens' group and in contrast to its position he supported the application, subject to some stringent conditions.

Section 18(9) of the Environmental Assessment Act defines assistance to the Board as the basis for the appointment of an expert witness. An opposing party, especially one that is financially unable to retain its own expert witness, may be prompted to make an application under the section in order to have a differing assessment and opinion brought to the hearing. The Board will entertain such an application but, while it will take into account the desire of a particular party to bolster its position at the hearing by utilizing a Board's witness, it will nevertheless be guided by the criterion set out in the section. The Board must be satisfied that the evidence of an appointed expert will be helpful to it. That it may, at the same time, assist a particular party is a factor, but not the decisive one.

The Board's experience in appointing its own witnesses has proved to be beneficial to the hearing process. While the Board rejected the main thesis of its own witness in the Finch Avenue application, and approved the proponent's undertaking, it also acknowledged the expert's contribution to the hearing by way of information-gathering and elucidation of certain aspects of the case, which helped the Board to arrive at its decision.



FINANCIAL ASSISTANCE FOR INTERVENORS

14

At present advance funding for participants in hearings before the Environmental Assessment Board (EAB) is possible only through an Order in Council. Existing provincial law does not give the EAB the jurisdiction to provide funding in advance to intervenors. The Board cannot make cost awards at the conclusion of a hearing either, unless its members are part of a Joint Board established under the Consolidated Hearings Act (CHA). Such cost awards, according to a Divisional Court decision in 1985, may only be awarded at the close of a hearing.

Since 1984 advance funding has been provided by Orders in Council for 10 hearings in which the Board has been involved. With one exception each Order in Council has authorized the EAB to distribute a specific amount of money among the potential participants who qualify for financial assistance under the eligibility criteria.

For the upcoming Ontario Waste Management Corporation (OWMC) hearing, however, the Order in Council regarding a funding programme for intervenors differs from the others. In this case the Board has been authorized not only to distribute funds but also to make recommendations to the government as to the total amount of funding to be provided. In June 1987, a Funding Panel of the EAB held a public meeting with potential participants in the OWMC hearing to discuss the funding eligibility criteria set out in the Order in Council. The results of that consultation, along with recommendations for amendments to the

criteria, were submitted to the Minister of the Environment and when a decision is reached, the Funding hearings will commence.

In another case, in late 1987, an Order in Council established a fund of \$300,000 to be distributed by the EAB to qualified participants in the pending hearing on the Ministry of Natural Resources' Class Environmental Assessment for Timber Management on Crown Lands in Ontario. Hearings were conducted before a Funding Panel in January 1988, and the requests for funds from 22 applicants amounted to over \$1,000,000. A Funding Order of February 29, 1988 allocated the available funds to 9 individuals and groups who met the eligibility criteria.

The Timber Management programme provided particular challenges for potential intervenors. Applicants for funding were required to develop their financial plans without knowing the locations and duration of the main hearing or the focus of parties with opposing interests who would appear at the hearings. However, the parties wanted to know the amount of financial assistance they could expect well in advance of the hearings in order to plan for the most efficient use of the funds.

The Funding Panel also had to assess the merits of each application with the same unknowns and with the knowledge that, since the application is under the Environmental Assessment Act, there will be no opportunity to make cost awards at the end of the hearing to parties who have assisted the Board in examining the issues. The Funding Panel considered the availability of funds from other sources, the likelihood that the hearings would be conducted as much as possible in convenient locations with a consequent reduction in participants' travel costs, and the provision of the Environmental Assessment Act which allows the Board to engage its own experts if it concludes that additional information is needed.

The Panel set priorities for allocation of the funds. Top priority was given to expert witness fees to try to ensure that the evidence of the proponent would be tested and all issues would be canvassed. Second priority was given to legal fees where it appeared counsel would be helpful in the examination of complex issues. Third priority was assigned to travel costs for participants who could not attend without assistance. The final priority was given to other eligible and reasonable disbursements, not including the costs of administrative overhead and salaries.

The Panel also attempted to assign enough funds for funded parties to make a meaningful contribution to the hearing rather than simply dividing the available funds equally among the applicants.

Particular attention was paid to each group's resources and any apparent duplication of interests. Groups who appeared to have similar interests were encouraged to work together, but the majority of the applicants wanted to have a separate presence at the

hearings. This resulted in a smaller allocation to similar groups who otherwise qualified and a careful examination of each applicant's past involvement in Timber Management issues. The Panel was of the view that such demonstrated commitment would ensure that the participation would be substantial and on-going.

In all cases where the Board has administered a funding programme for intervenors, the overriding principle has been to try to ensure that funds would be used effectively to enhance the Board's understanding of the issues being presented at the hearing.

Where there is no jurisdiction for cost awards at the end of the hearing, the allocation of advance funding is more difficult. The funding panel must try to allocate the available funds to ensure a meaningful representation. In doing so, it must rely on intervenors' financial plans based on advance details of the application and estimates of time involvement. And yet, funding must be available early enough to ensure effective planning.

Intervenor funding has provided major benefits to the Board in its role in the environmental approvals process. Responsible representation of public interests helps to ensure that all of the issues are identified and that there is a balance of evidence for the Board to examine in arriving at its decision on each application. Therefore the Board is particularly interested in making funding programmes work to provide effective participation.



SELECTED LANDFILL CASES



16

During the last year the Board heard several landfill applications of interest. All of these were conducted under the Environmental Protection Act (EPA).

An application by the City of North Bay for the expansion of its existing landfill site was exempted from the Environmental Assessment Act (EAA), even though municipalities seeking approvals for landfill sites are generally subject to the Act. In this case, the exemption was granted by the Minister on the basis that the extension of the existing site would be for only 3 years, and the application for approval of any new site would be subjected to the EAA process. The City was required to proceed expeditiously to complete its search for a new site and obtain the necessary approvals for a long-term waste management programme in accordance with the EAA.

At the hearing the Board heard evidence regarding the City's efforts to have a long-term waste management programme in place within 3 years. It also listened to evidence on the urgency of closing the present site, and recommended that the City be required to close the existing landfill at the end of 3 years regardless of whether another site had been approved. The Board referred to a report of the Environmental Assessment Advisory Committee (EAAC). This committee was established in 1983 to advise the Minister on the application of the EAA to public and private sector projects. In its Report No. 24 the EAAC had advised the Minister on EAA exemption requests by municipalities for interim expansion of landfills.

It recommended that any proposed expansion should be for a maximum of 3 years and that no more than 1 exemption should be granted to each municipality.

The environmental safety of the North Bay site was of concern because leachate was migrating from the landfill and had escaped beyond the property boundary. A leachate collection and treatment system was proposed and accepted by the Board. Since this system was part of the application, the Board felt that the following criteria established by the EAAC had been met:

"The proposed expansion must not be at an existing site with significant on-going pollution problems or, if there are such problems, the municipality must show that it has developed, with public consultation, a pollution abatement strategy to deal with such problems, both in the short and the long term. This strategy, along with a plan for implementation, must be included in the application for the *Environmental Protection Act* approval."

In contrast, the Board turned down an application from a privately owned landfill operator. Quinte Sanitation Services Limited had applied to continue the operation of its landfill site in Sidney Township for approximately 2 years. One reason for refusal was that the site was contaminating groundwater off-site and no remedial measures were proposed. The Board took exception to the "cavalier attitude of the applicant to the uninterrupted contaminant flow and to the lack of effective action on the part of those bodies of the MOE which are directly responsible". It concluded that it could not endorse the continued use of the site, even for a period of 26 months, given that groundwater was contaminated, the plume had migrated off-site, and no remedial measures were being taken to collect and treat the leachate.

In addition, the Board found that the operator's poor performance, which included the failure to compact and cover the waste daily (leading to litter and odour problems), failure to maintain a leachate control berm adequately, and failure to keep the south gate locked, constituted a record falling far short of what should be expected of a responsible operator. It denied the application on this basis as well.

In another application, the Regional Municipality of Haldimand-Norfolk requested approval for increasing the service area of the Tom Howe Waste Disposal Site in the City of Nanticoke. Prior to this application exemption from the EAA had been granted for 5 years. Among the conditions to the exemption was the requirement that the Region continue to pursue a long-term waste management programme. This would have to be in accordance with the EAA and any EPA approval granted to this application would expire at the end of the 5 year period.

Of major public concern at the Tom Howe hearing was the effect of 40,000 pounds of pesticide prod-

uct (mainly chlorinated hydrocarbons but also 1,500 lbs of DDT) deposited at the landfill in 1978. Evidence was provided on the possible chemical impact of the site and the advisability of removing the pesticides from the existing fill area. The expert witness who gave evidence on this subject, and whose evidence was accepted by the Board, concluded that there was no chemical impact on the surrounding environment and that a much greater environmental hazard would be created by removing the pesticides than by leaving them in the site.

The Board determined that expansion of the site's service area was justified on the basis that the region suffered a lack of adequate landfill capacity, and safety could be assured through the imposition of a number of conditions. Among these were monitoring for purgeable organics and organochlorine pesticides necessitated by the location of pesticide product in the landfill, and leachate control measures to deal with the greater amounts of leachate which would be generated by increased waste volumes.

Another hearing involved an application by Boise Cascade Canada Ltd. for approval of a waste disposal site for mill waste in the Town of Fort Frances. Trace amounts of dioxins had been found in the sludge from Boise Cascade's plant and the company proposed that this sludge should be landfilled. This was the first application before the Board where direct landfilling of dioxins, albeit trace amounts, was considered. It was heard in the absence of any regulatory guidance for the concentration of dioxins in sludges.

The Board concluded that in the particular circumstances of the application, the landfilling of sludges containing trace amounts of dioxins was not likely to endanger the health or safety of any person nor constitute an unacceptable hazard to the environment. The Board specifically noted that only minute quantities of dioxin were present in the sludge, the site was relatively isolated, the chemical compounds were unlikely to migrate to any extent in the landfill environment and human exposure to the wastes would be minimal. A monitoring programme was required as

a condition of approval and, in the event that this monitoring indicates that dioxins are present in levels greater than the previously detected trace amounts, or that these chemicals are migrating, all landfilling of the dioxin-containing sludges will be required to cease until a thorough review is conducted by the MOE and appropriate remedial measures adopted.

The Board took pains to point out that landfilling of dioxin-containing wastes should be considered on a case specific basis. It stressed that general conclusions with respect to the acceptability of landfill disposal of dioxins should not be drawn from its report.



CONDITIONS OF APPROVAL

18

The Environmental Assessment Board has the authority to impose terms and conditions of approval on proposed undertakings. This authority is found in the Environmental Assessment Act (EAA), section 12(2)(e) and under the Consolidated Hearings Act, sections 5(2) and 5(4), where EAB members form part of a Joint Board. Under the Environmental Protection Act (EPA) and the Ontario Water Resources Act (OWRA), the Board may also recommend conditions to the Director of Approvals. The Director has the power to impose these conditions under section 38(2)(c) of the EPA and section 24(4) of the OWRA.

The Board's power to impose conditions has been used in almost every application it has considered and has therefore been applied to a broad range of issues. Conditions of approval may address:

- technical concerns, such as the design of a particular facility;
- monitoring and reporting programmes, to ensure compliance with provincial regulations and the Certificate of Approval;
- mitigation measures to counter adverse impacts, such as noise barriers, buffer zones and leachate collection systems;
- contingency plans, in the event that predicted impacts are exceeded;
- provision for liability insurance and financial securities;
- requirements for the establishment of community liaison committees to allow for public scrutiny of operations and performance; and
- other specific concerns that have been identified by a community or interested party.

The courts have held that following a hearing conducted under the EAA the Board, as a condition of approval, may approve a method of carrying out an undertaking that is an alternative to the one proposed by the applicant. Depending on the nature and purpose

of an undertaking this could involve an alternative route for a highway or hydro transmission line, an alternative method of processing wastes, or an alternate site for a project.

The form taken by conditions of approval will vary according to the concerns addressed during the hearing. The Board may direct the proponent to perform further research or provide additional data before the project can proceed. Or it may simply require that the project proposal be modified to meet the concerns identified at the hearing. It may also decide that the project should be staged in a certain manner so that its impacts may be monitored or mitigated.

When the Board has given its decision on an application, its jurisdiction ends. It must therefore provide an implementation framework and comprehensive, clear conditions that minimize the environmental impacts. Responsibility for compliance rests on the proponent. Government agencies, with recourse to the courts, are responsible for monitoring and enforcing this compliance.

The Board may also impose conditions of approval that demand standards of performance beyond those required in other applications or in existing guidelines and standards. For example, it may be convinced that a particular project, implemented with the best available and practical technology, can produce air emission levels lower than those set by government guidelines or standards. It might also be of the opinion that, in a particular situation, a higher degree of environmental protection should be achieved. In these cases the Board will impose conditions which it considers provide the best environmental protection.

There are several major factors that the Board considers when imposing conditions of approval:

- 1/ the purposes of the legislation under which the application is being heard;
- 2/ whether the condition is relevant to the application and the matters to be decided;
- 3/ whether the condition addresses an identifiable environmental impact and is designed to avoid or mitigate that impact;
- 4/ whether the condition can be fulfilled; and
- 5/ whether the cost of compliance would be prohibitive.

Any development project represents a change to the environment and the Board uses conditions of approval to minimize the environmental risks. Approval is rarely granted without conditions. In addition, some conditions regarding insurance, performance bonds and post-closure trust funds, for example, go beyond dealing with the predicted impacts and risks and deal in addition with risks that are not predicted. If the project's negative impacts and risks cannot be predicted and/or mitigated to an acceptable extent, or if the conditions deemed necessary for an acceptable project are considered to be unreasonably onerous or impossible to fulfill, the project will not be approved.

THE BOARD OF NEGOTIATION

The Board of Negotiation was created in 1968 to provide a mechanism for negotiating claims concerning contaminant damage to property. At its formation the Board consisted of three people, but in 1985 an Order in Council was passed to appoint the entire Environmental Assessment Board as a new Board of Negotiation.

The purpose, composition and function of the Board of Negotiation (to be described in this chapter as "the Board") are set out in section 134 of the Environmental Protection Act (EPA). In subsection (1) is the provision that can begin the process of activating the Board:

"Where a person complains that a contaminant is causing or has caused injury or damage to livestock or to crops, trees or other vegetation which may result in economic loss to such person, he may, within fourteen days after the injury or damage becomes apparent, request the Minister to conduct an investigation."

On receiving such a request the Minister of the Environment will initiate an investigation through the appropriate department of the Ministry (this is invariably the phytotoxicology department). The investigator's report would then be given to the claimant and to the person (which can include a municipality or other public body) responsible for the source of the contaminant alleged to be the cause of the injury or damage. Since 1968 the Ministry has conducted some 2,400 investigations of this kind.

If the claimant and the person responsible are not able to settle the claim, either one can have the Board activated by serving a notice stating that he requires a settlement of the claim to be negotiated by the Board. To be submitted to the Board the complaint must fulfill two requirements: the damage or injury must be found by the Ministry's report to be caused by a contaminant, and the injury must be one that has resulted or will result in economic loss. A panel consisting of at

least two members of the Board will then be appointed to negotiate a settlement.

The Board has three main functions as set out in subsection (10): it must meet with the parties, must proceed in a summary and informal manner to try to negotiate a settlement and must endeavour to make an assessment of the financial cost of the injury or damage. It cannot make a finding of liability. However, the process conducted by the Board is without prejudice to any subsequent legal proceedings, so the matter of liability and other aspects of the claim can, if necessary, be determined by a court or other appropriate body.

The meeting of the Board with the claimant and the person alleged to be responsible is informal and the Board takes on the role of mediator. It will confer with both parties together and then perhaps with each one separately, or it may leave the two parties to discuss the matter themselves after some preliminary positions have been stated. The Board will refrain from making a determination (other than assessing the amount of the damage) that will in any way impede free and flexible negotiation. In fact it will do everything possible to promote an atmosphere conducive to settlement.

Of the 2,400 complaints received by the Ministry to date only about 670 have fulfilled the requirements that qualify them for a Board hearing, i.e. damage caused by a contaminant resulting in economic loss. Many of these 670 claims were settled or dropped prior to a hearing. Fewer than 200 claims have been referred to the Board since 1968 and only 42 have reached the hearing stage. Since the Environmental Assessment Board took over the Board's function in January 1986, it has only conducted hearings on two cases.

The relatively small number of hearings can be attributed to the fact that settlements are generally reached on the strength of the Ministry's reports and, in most cases, claimants do not wish to pursue their case any further. Another reason is that once the source of the contamination has been identified in the Ministry's report, steps are taken to control or remove the source to the satisfaction of the claimant.

It can be seen, therefore, that the provisions of section 134 offer the public a valuable service. Firstly, the Ministry provides an impartial report, often technical in nature, which describes the injury or damage and its cause and extent. The report serves as a basis for negotiation. If the parties are unable to come to an agreement regarding damages, then the Board can be called upon to help negotiate a settlement. Even if no settlement is attained as a result of the Board's intervention the complainant still has the benefit of the Ministry's report, which can be used in further proceedings.

OTHER SOURCES OF INFORMATION

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Available from:

The Board Secretary
Environmental Assessment Board
P.O. Box 2382
2300 Yonge Street
Suite 1201
Toronto, Ontario M4P 1E4
Tel: (416) 323-4806

- *The Environmental Assessment Board Citizens' Guide*
- *The Environmental Assessment Board Rules of Practice and Procedure* (\$2.50)
(The Rules of Practice and Procedure are also available through the Ontario Government Bookstore.)

Available from:

Environmental Assessment Branch
Ministry of the Environment
135 St. Clair Avenue West
Toronto, Ontario M4V 1P5
Tel: (416) 323-4629

- *A Citizens' Guide to Environmental Assessment*
- *EA Update*

Available from:

Ontario Government Bookstore
880 Bay Street
Toronto, Ontario M7A 1N8
Tel: in Toronto, 965-6015
Other communities, 1-800-268-7540

- *Environmental Protection Act*
- *Environmental Assessment Act*
- *Consolidated Hearings Act*
- *Ontario Water Resources Act*
- *Public Inquiries Act*

AUTRES SOURCES D'INFORMATION

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On peut se procurer auprès du :

Secrétaire
Commission des évaluations environnementales
C.P. 2382
2300, rue Yonge
Bureau 1201
Toronto (Ontario) M4P 1E4
Téléphone : (416) 323-4806

- *Le Guide du citoyen de la Commission des évaluations environnementales*
 - *Le Règlement intérieur de la Commission des évaluations environnementales* (2,50\$)
- (Ce dernier ouvrage est également en vente à la librairie du gouvernement de l'Ontario.)

On peut se procurer auprès de la :

Direction des évaluations environnementales
Ministère de l'Environnement
135, avenue St. Clair ouest
Toronto (Ontario) M4V 1P5
Téléphone : (416) 323-4629

- *Le Guide à l'intention du citoyen - évaluations environnementales*
- *EA Update* (en anglais seulement)

On peut se procurer auprès de la :

Librairie du gouvernement de l'Ontario
880, rue Bay
Toronto (Ontario) M7A 1N8
Téléphone : à Toronto, 965-6015
Ailleurs, 1-800-268-7540

- *La Loi sur la protection de l'environnement*
- *La Loi sur les évaluations environnementales*
- *La Loi sur la jonction des audiences*
- *La Loi sur les ressources en eau de l'Ontario*
- *La Loi sur les enquêtes publiques*

LA COMMISSION DE NÉGOCIATION

négociations en vue de la transaction de la demande et évaluer les coûts financiers des lésions ou des dommages. Elle ne peut rendre un verdict de responsabilité. Cependant, elle fait ses démarches sous réserve d'une instance ultérieure; la question de la responsabilité et d'autres aspects de la demande peuvent donc, si nécessaire, être déterminés par un tribunal ou tout autre organisme compétent.

La rencontre entre la Commission, l'auteur de la demande et la personne présumée responsable est sans caractère officiel. La Commission joue le rôle d'arbitre. Elle consultera les deux parties conjointement et peut être ensuite individuellement, ou il est possible qu'elle les laisse discuter des questions en litige entre elles après qu'elles ont énoncé leurs positions. La Commission se gardera de porter un jugement (à part évaluer le montant des dommages) pouvant nuire d'une façon ou d'une autre au bon déroulement des négociations. De fait, elle fera tout en son pouvoir pour favoriser une atmosphère propice à un règlement.

Des 2 400 plaintes reçues par le Ministère à ce jour, environ 670 étaient admissibles à une audience devant la Commission, c'est-à-dire que des dommages causés par un contaminant entraînaient dans chaque cas une perte économique. Beaucoup de ces 670 demandes ont été réglées ou retirées préalablement à l'audience. Moins de 200 ont été présentées à la Commission depuis 1968 et seulement 42 ont fait l'objet d'une audience. Depuis que la Commission des évaluations environnementales s'est vu confier les fonctions de la Commission, en janvier 1986, elle n'a tenu d'audiences que sur deux affaires.

On peut attribuer le nombre relativement petit d'audiences au fait qu'on parvient généralement à un règlement sur la foi des rapports du Ministère et, dans la plupart des cas, les auteurs de ces demandes ne désirent pas pousser l'affaire plus loin. D'autre part, dès que le Ministère a identifié la source de contamination il adopte des mesures en vue de la contrôler ou de l'éliminer, à la satisfaction de l'auteur de la demande.

On peut donc constater que les dispositions de l'article 134 offrent à la population un service inestimable. En premier lieu, le Ministère dresse un rapport impartial, souvent technique, sur les lésions ou les dommages ainsi que leur cause et leur importance. Le rapport sert de base aux négociations. Si les parties sont incapables de s'entendre sur les dommages, on peut alors en appeler à la Commission de négociation. Même si l'intervention de celle-ci ne permet pas de parvenir à un règlement, le plaignant disposera toujours du rapport du Ministère qu'il pourra utiliser dans d'autres instances.

La Commission de négociation a été créée en 1968 afin d'offrir un mécanisme de négociation quand quelqu'un se plaint que des dommages ont été causés à ses biens par des contaminants. La Commission comprenait au début trois personnes, mais un décret pris en 1985 a désigné la Commission des évaluations environnementales au complet en tant que commission de négociation.

L'objectif, la composition et le rôle de la Commission de négociation (appelée ci-après « la Commission ») figurent à l'article 134 de la *Loi sur la protection de l'environnement*. Le paragraphe (1) décrit les conditions pour amorcer le processus d'enquête.

« Si une personne se plaint qu'un contaminant cause ou a causé des lésions à du bétail, ou des dommages à des récoltes, à des arbres ou à une autre végétation qui peuvent occasionner une perte financière à cette personne, elle peut, dans les quatorze jours après que les lésions ou les dommages deviennent apparents, demander au ministre de faire une enquête. »

Dès réception d'une telle demande, le ministre de l'Environnement fera faire une enquête par le service approprié du Ministère (il s'agit invariablement du Service de phytotoxécologie). Le rapport de l'enquêteur sera ensuite remis à l'auteur de la demande et à la personne responsable de la source de contamination présumée à l'origine des lésions ou des dommages (il peut s'agir d'une municipalité ou d'un autre corps constitué). Depuis 1968, le Ministère a mené quelque 2 400 enquêtes de cette nature.

Si l'auteur de la demande et la personne responsable ne parviennent pas à s'entendre, l'un d'eux peut signifier un avis de négociation à l'autre. Pour pouvoir être présentée à la Commission la plainte doit répondre à ces deux exigences : le rapport du Ministère doit démontrer que les dommages ou les lésions ont été causés par un contaminant, et ceux-ci doivent être de nature à entraîner une perte économique. Un comité formé d'au moins deux membres de la Commission sera ensuite désigné pour négocier un règlement.

Les trois fonctions principales de la Commission figurent au paragraphe (10) : elle doit rencontrer les parties, entreprendre de façon sommaire et sans formalisme des

CONDITIONS D'AUTORISATION

18

La Commission des évaluations environnementales a le pouvoir d'imposer des conditions quand elle autorise un projet. Ce pouvoir lui est conféré par l'alinéa 12(2)(c) de la Loi sur les évaluations environnementales et par les paragraphes 5(2) et 5(4) de la Loi sur la jonction des audiences, lorsque les membres de la Commission font partie d'une commission mixte. La Commission peut également recommander certaines conditions au directeur des autorisations en vertu de la Loi sur la protection de l'environnement et de la Loi sur les ressources en eau de l'Ontario. Le directeur, pour sa part, peut imposer ces conditions aux termes de l'alinéa 38(2)(c) de la Loi sur la protection de l'environnement et du paragraphe 24(4) de la Loi sur les ressources en eau de l'Ontario.

Dans presque tous les cas qu'elle a étudiés, la Commission a imposé des conditions, et elle s'est donc servie de ce pouvoir dans de nombreux domaines. Les conditions d'autorisation peuvent porter sur :

- des questions techniques, comme la conception d'une installation particulière;
- des programmes de surveillance et la présentation de rapports, comme moyen de s'assurer du respect des règlements provinciaux et du certificat d'autorisation;
- des mesures de correction permettant d'atténuer les effets dommageables, notamment des barrières antibruit, des zones tampons et des systèmes de collecte du lixiviat;
- des plans d'urgence, dans l'éventualité où les effets seraient plus graves que prévu;
- l'obligation de contracter une assurance-responsabilité civile et de soumettre des garanties financières;
- l'obligation de créer des comités de liaison avec la collectivité en vue de permettre à cette dernière de procéder à l'examen des activités et du rendement; et
- toute autre question soulevée par une collectivité ou une partie intéressée.

Les tribunaux ont statué que la Commission, après avoir tenu une audience en vertu de la Loi sur les évaluations

environnementales, pouvait approuver, en tant que condition d'autorisation, une méthode d'exécution différente de celle proposée par le demandeur. Selon la nature et l'objectif du projet, cela peut signifier un trajet différent pour une voie publique ou une ligne de transmission d'énergie, une méthode différente de traitement des déchets ou un autre emplacement pour le projet.

Les conditions d'autorisation dépendront des craintes exprimées pendant l'audience. Il se peut que la Commission ordonne au promoteur d'effectuer plus de recherches ou de fournir des renseignements supplémentaires avant d'approuver le projet. Ou encore, elle peut ne demander qu'une simple modification du projet afin de dissiper les inquiétudes exprimées à l'audience. Il est également possible qu'elle décide que le projet devrait se dérouler d'une certaine manière de pouvoir en surveiller ou en corriger les effets.

Le rôle de la Commission se termine au moment où elle rend sa décision. Elle doit donc prévoir un plan de mise en oeuvre et des conditions précises et complètes afin de réduire au maximum les répercussions sur l'environnement. Il incombe au promoteur de se conformer aux conditions et aux organismes gouvernementaux, qui peuvent recourir aux tribunaux, de veiller à ce qu'il respecte effectivement ces conditions.

Par ailleurs, les conditions d'autorisation peuvent exclure des normes de rendement supérieures à celles qui sont imposées, à d'autres ou qui sont contenues dans les directives et normes en vigueur. Par exemple, il est possible qu'elle soit convaincue qu'un projet particulier, mis en oeuvre grâce aux techniques les plus évoluées, puisse produire des émissions à des concentrations inférieures à celles fixées dans les directives ou normes du gouvernement. Il se peut également que la Commission estime qu'il faille protéger davantage l'environnement dans une situation donnée. Dans un tel cas, elle imposera des conditions qui, à son avis, permettront de mieux y parvenir.

La Commission tient compte de plusieurs facteurs importants lorsqu'elle impose des conditions d'autorisation : 1/ les objectifs de la Loi en vertu de laquelle la demande est entendue;

2/ la pertinence des conditions;

3/ la question de savoir si les conditions portent sur une répercussion environnementale identifiable et si elles ont pour but d'éviter ou d'atténuer cette répercussion;

4/ la possibilité de respecter ces conditions, et 5/ le coût rattaché au respect des conditions.

Tout projet d'aménagement entraîne une modification de l'environnement, et la Commission se sert des conditions d'autorisation pour réduire au maximum les risques que le projet pose à celui-ci. Il est rare qu'on accorde une autorisation inconditionnelle. De plus, certaines conditions relatives à l'assurance, aux garanties de bonne exécution et aux fonds en fiducie après achèvement des travaux, par exemple, vont au-delà des conséquences probables et portent donc sur des risques non prévus. Si les effets et les risques ne peuvent être prévus ou corrigés à un niveau acceptable, ou si les conditions jugées nécessaires pour rendre le projet acceptable sont jugées démesurément onéreuses ou impossibles à respecter, le projet ne sera pas autorisé.

cussions chimiques possibles et l'opportunité de retirer les pesticides. Le témoin expert, dont la déposition a été reçue par la Commission, a signalé pour sa part que les pesticides n'avaient pas de répercussions chimiques sur le milieu ambiant et que leur élimination représentait un danger beaucoup plus grand pour l'environnement que leur présence dans les lieux.

La Commission a statué que l'agrandissement de la surface était justifié, car il n'y avait pas suffisamment de décharges dans la région et l'imposition d'un certain nombre de conditions garantirait la sécurité des lieux. Parmi ces conditions, mentionnons le contrôle des pesticides organiques et organochlorés épurables, mesure nécessaire à cause de la présence de pesticides sur le terrain, et le contrôle du lixiviat, puisque l'accroissement du volume de déchets en augmenterait la quantité.

Une autre audience portait sur une demande présentée par Boise Cascade Canada Ltée en vue d'obtenir l'autorisation d'aménager un lieu d'élimination des résidus de son usine de Fort Frances. On avait trouvé des dioxines à l'état de trace dans les boues et la société voulait les enfouir. C'était la première fois que la Commission recevait une demande d'enfouissement direct de dioxines, même à l'état de trace. Elle a entendu la cause malgré l'absence de réglementation sur la concentration de dioxines dans les boues.

La Commission a conclu, dans ce cas, qu'il était improbable que l'enfouissement de boues contenant des dioxines à l'état de trace puisse mettre en danger la santé ou la sécurité des gens ou présenter des risques inacceptables pour l'environnement. Elle a fait remarquer que seuls des quantités infimes de dioxines étaient présentes dans les boues, que le terrain était relativement isolé, qu'il était peu probable que les composés chimiques s'étendent dans la décharge et que les risques d'exposition étaient minimes. L'autorisation était conditionnelle à la création d'un programme de surveillance et, si cette surveillance indiquait que les dioxines étaient présentes en quantités supérieures à celles détectées auparavant à l'état de trace ou qu'elles se déplaçaient, on exigerait alors l'interruption de tout enfouissement des boues jusqu'à ce qu'une étude approfondie soit menée par le ministère de l'Environnement et que des mesures correctives appropriées soient adoptées.

La Commission a souligné que les projets de mise en décharge de déchets contenant des dioxines devaient être étudiés individuellement, et qu'il ne fallait pas tirer de conclusions générales de son rapport à propos de l'enfouissement comme méthode d'élimination des dioxines.





an dernier, la Commission a tenu plusieurs audiences dignes de mention relatives à des décharges. Toutes ces audiences se sont déroulées en vertu de la *Loi sur la*

protection de l'environnement.

Ainsi, une demande déposée par la ville de North Bay

pour l'agrandissement de sa décharge a été exemptée des

dispositions de la *Loi sur les évaluations environnementales*,

même si les municipalités souhaitent obtenir un certificat

d'autorisation y sont généralement assujetties. Dans cette

affaire, l'exemption a été accordée par le Ministre parce

que l'agrandissement des lieux n'était que pour une durée

de trois ans et que la demande d'autorisation d'une nou-

velle décharge serait assujettie à la Loi. On a cependant

exigé de la ville qu'elle trouve rapidement un nouveau ter-

rain et qu'elle obtienne les autorisations nécessaires à la

création d'un programme de gestion des déchets à long

terme, conformément à la *Loi sur les évaluations*

environnementales.

Au cours de l'audience, la Commission avait appris

que la ville cherchait à créer un tel programme d'ici trois

ans. Elle avait aussi entendu des témoignages sur la néces-

sité de fermer les lieux actuels et a donc suggéré que l'on

oblige la ville à les fermer au bout de trois ans, qu'un autre

terrain ait été autorisé ou non. La Commission s'est re-

portée à un rapport du Comité consultatif des évaluations

environnementales. Ce comité, créé en 1983, a pour but

de conseiller le Ministre quant à l'application de la Loi aux

projets des secteurs public et privé, et dans son rapport

n° 24, il avait informé le Ministre des demandes d'exemption

présentées par des municipalités pour l'agrandissement pro-

visoire de leur décharge.

À cet égard, il a recommandé que tout projet d'agrandissement ne soit autorisé pour une période de trois ans au plus et qu'une seule exemption soit accordée à chaque municipalité.

La décharge risquait d'avoir des effets néfastes sur

l'environnement, puisque le lixiviat se déplaçait et s'était

déjà déversé en dehors des limites de la propriété. La

Commission a approuvé le système de collecte et de

traitement du lixiviat qui a été proposé. Ce système étant

inclus dans la demande, la Commission estimait qu'on

avait respecté les critères suivants fixés par le comité con-

sultatif :

« L'agrandissement ne doit pas porter sur des lieux

existants où il y a des problèmes importants de pollu-

tion ou, si de tels problèmes existent, la municipalité

doit montrer qu'elle a élaboré, en consultation avec

le public, une stratégie de dépollution à court terme

et à long terme. Cette stratégie et le plan de mise en

oeuvre doivent être inclus dans la demande d'autori-

sation présentée en vertu de la *Loi sur la protection*

de l'environnement. »

Par contre, la Commission a rejeté une demande

déposée par l'exploitant d'une décharge privée. Quinte

Sanitation Services Limited désirait poursuivre l'exploita-

tion de cette décharge du canton de Sidney pendant

environ deux ans. La contamination des eaux souterraines

était indigne par l'attitude désinvolte du promoteur rela-

tivement à l'écoulement continu des contaminants et à

l'inaction des services compétents du ministère de

l'Environnement. Elle a décidé qu'elle ne pouvait appuyer

l'exploitation, même pour 26 mois, étant

donné que les eaux souterraines étaient contaminées, que

le lixiviat s'écoulait en dehors de la décharge et qu'aucune

mesure corrective n'avait été prise pour recueillir et

traiter ce lixiviat.

La Commission était en outre d'avis que le bilan mé-

diocre de l'exploitant, qui avait omis de tasser et de cou-

vrir les déchets quotidiennement (causant des problèmes

d'ordures et de mauvaises odeurs), d'entretenir adéquata-

tement la berge de rétention du lixiviat et de garder la

porte sud verrouillée, était loin de témoigner d'une atti-

tude responsable. Voilà une autre raison pour laquelle elle

a refusé d'acquiescer à la demande.

Dans une autre demande, la municipalité régionale

de Haldimand-Norfolk désirait recevoir l'autorisation

d'agrandir la surface de la décharge Tom Howe, à

Nanticoke. Une exemption avait été accordée pendant

cinq ans précédemment à cette demande, aux termes de la

Loi sur les évaluations environnementales. L'élaboration,

par la région, d'un programme de gestion des déchets à

long terme était l'une des conditions. Ce programme de-

vait être conforme à la *Loi sur les évaluations environ-*

nementales et toute autorisation accordée en vertu de la

Loi sur la protection de l'environnement prendra fin au

bout de la période de cinq ans.

Les effets du dépôt, en 1978, de 40 000 livres de

pesticides (principalement des hydrocarbures chlorés mais

également 1 500 livres de DDT) étaient une importante

question d'intérêt public à l'audience sur la décharge Tom

Howe. Au cours des témoignages, on a abordé les réper-

Dans tous les cas de gestion, par la Commission, d'un programme de financement pour les intervenants, le principe de base a été de faire en sorte que les fonds soient utilisés efficacement de manière à faire mieux comprendre les questions en litige à la Commission. Il est plus difficile de verser des avances lorsqu'aucun remboursement des frais n'est autorisé à la fin de l'audience. Le comité de financement doit répartir les fonds disponibles de manière à assurer une représentation valable. Ce faisant, il doit se fier aux plans financiers soumis par les intervenants et basés sur ce que ceux-ci connaissent du projet et sur le calendrier prévu des activités. Néanmoins, les fonds doivent être offerts aux participants assez tôt pour leur permettre de préparer efficacement leurs arguments.

Le financement des intervenants est un atout important pour les activités de la Commission dans le domaine des autorisations environnementales. En tenant compte des intérêts du public, on veille à ce que toutes les questions en litige soient circonscrites et à ce que la Commission puisse établir la prépondérance de la preuve au moment de rendre ses décisions. La Commission souhaite donc ardemment que les programmes de financement réussissent à favoriser une participation adéquate.



AIDE FINANCIÈRE AUX INTERVENANTS

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En ce moment, les participants aux audiences de la Commission des évaluations environnementales ne peuvent obtenir de financement à l'avance que par décret. Les lois provinciales actuelles, en effet, ne donnent pas à la Commission le pouvoir d'avancer des fonds aux intervenants. Qui plus est, la Commission ne peut rembourser les frais à la fin d'une audience, à moins que ses membres ne fassent partie d'une commission mixte créée en vertu de la *Loi sur la jonction des audiences*. Ces frais ne peuvent être remboursés, suivant une décision rendue en 1985 par la Cour divisionnaire, qu'à la fin des travaux.

Depuis 1984, des avances ont été offertes par décret pour dix audiences auxquelles la Commission a participé. Sauf dans un cas, chaque décret autorisait la Commission à distribuer un montant précis entre les participants admissibles à une aide financière.

Dans le cadre de l'audience imminente sur la Société ontarienne de gestion des déchets, le décret relatif au programme de financement des intervenants se distingue des autres. Ainsi, la Commission a non seulement été autorisée à distribuer des fonds, mais également à recommander le montant à prévoir au gouvernement. En juin 1987, un comité de financement de la Commission a tenu une assemblée publique avec les participants éventuels à l'audience de la Société afin de discuter des critères d'admissibilité à une aide financière que renfermait le décret. Les résultats de cette consultation, de même que les modifications que l'on proposait aux critères, ont été présentés au ministre de l'Environnement, et les audiences sur le financement commenceront dès qu'une décision sera prise.

Dans une autre affaire, un décret pris à la fin de 1987

a permis de créer un fonds de 300 000 \$ qui seront distribués par la Commission aux participants admissibles aux audiences en instance sur l'évaluation environnementale de portée générale des Richesses naturelles pour la gestion du bois d'œuvre sur les terres de la Couronne en Ontario. Un comité de financement a tenu des audiences en janvier 1988; les demandes d'aide financière des 22 candidats dépassaient 1 000 000 \$. Un décret de financement en date du 29 février 1988 répartissait les fonds disponibles entre neuf particuliers et groupes répondant aux critères d'admissibilité.

Le programme sur la gestion du bois d'œuvre posait des difficultés particulières aux intervenants éventuels. On exigeait des candidats qu'ils dressent un plan financier sans connaître les lieux ni la durée de l'audience principale, pas plus que les arguments des parties adverses. Toutefois, les parties désiraient connaître le montant qu'elles pourraient recevoir bien avant les audiences, afin d'en planifier efficacement l'utilisation.

Le comité de financement devait également évaluer chaque demande en tenant compte des mêmes impondérables et du fait que, conformément à la *Loi sur les évaluations environnementales*, il lui serait impossible de rembourser les frais à la fin des audiences aux parties ayant prêté leur assistance à la Commission dans l'examen des questions en litige. Il a considéré la possibilité d'obtenir des fonds d'autres sources, la probabilité que les audiences se tiendraient à plusieurs endroits (ce qui réduirait les frais de déplacement des participants), ainsi que la disposition de la *Loi sur les évaluations environnementales* qui permet à la Commission d'engager ses propres spécialistes si elle estime qu'elle a besoin de renseignements supplémentaires.

Le comité a établi des priorités pour la répartition des fonds. Il a d'abord tenu compte des honoraires des témoins experts afin de s'assurer de l'examen des arguments du promoteur et de toutes les questions en litige. Il a ensuite songé aux frais juridiques dans les cas où il serait utile de faire appel à un avocat pour l'examen de questions complexes. La troisième priorité a été accordée aux frais de déplacement des participants qui ne pourraient prendre part à l'audience sans aide financière. On a finalement tenu compte des autres dépenses admissibles et raisonnables, à l'exception des frais généraux et des salaires.

Le comité a aussi décidé d'offrir aux parties financières un montant de contribution réellement à l'audience plutôt que de diviser équitablement les fonds entre les requérants.

On a accordé une attention particulière aux ressources de chaque groupe et à la similitude de leur action, le cas échéant. On a incité les groupes qui semblaient avoir des intérêts communs à s'unir, mais la majorité des requérants désirait comparaître individuellement aux audiences. En conséquence, on a versé des sommes de moindre importance à des groupes analogues et examiné minutieusement l'expérience de chacun dans le domaine de la gestion du bois d'œuvre. Le comité était d'avis qu'un engagement établi permettrait de s'assurer de leur participation sérieuse et constante.

aurait pu s'en dispenser et procéder elle-même à l'interrogatoire oral du témoin, mais elle a décidé qu'un avocat devrait le représenter, l'aider dans la présentation orale de la preuve et le préparer pour le contre-interrogatoire. La Commission était d'avis que, puisque les témoins du requérant étaient représentés par un avocat, le témoin de la Commission devait l'être également. Elle estimait de plus que si elle intervenait activement au cours de l'interrogatoire principal, du contre-interrogatoire et du réinterrogatoire, les parties pourraient croire qu'elle faisait siennes les opinions de son expert, alors qu'en fait elle n'avait pris aucune position à ce stade à l'égard de la déposition du témoin.

Aussi bien dans son rapport que dans son témoignage, le témoin s'est comporté comme un expert indépendant. Ses compétences dans le domaine des transports et de la circulation ont été signalées à l'audience, et les parties ont eu amplement l'occasion de contester son expertise et tout parti pris pouvant diminuer la valeur de sa déposition. Comme prévu, son témoignage a suscité une forte réaction de la part du requérant au cours du contre-interrogatoire et de la contre-preuve.

Le paragraphe 18(9) de la *Loi sur les évaluations environnementales* a été appliqué de façon différente et novatrice en 1983 dans l'audience mettant en cause la Manville Canada Inc. Dans cette affaire, deux associations de contribuables avaient retenu les services d'un certain nombre de témoins experts avant le début de l'audience. Ceux-ci avaient effectué des recherches préliminaires sur les questions sur lesquelles ils seraient appelés à témoigner.

À l'ouverture de l'audience, l'avocat représentant les associations a demandé que les experts soient nommés par moins de la Commission et qu'ils soient rémunérés par celle-ci pour le travail qu'ils avaient effectué en rapport avec la demande, y compris avant leur nomination. Pendant l'audience, la Commission a reconnu que les témoins des associations lui avaient permis de mieux comprendre les questions en litige et les a nommés experts de la Commission. Elle a justifié cette mesure en soulignant que non seulement la déposition des témoins avait été utile, mais également que les associations de contribuables avaient besoin d'aide financière. La demande de rémunération pour le travail que les experts avaient effectué avant leur nomination a été acceptée en partie. En effet, la Commission a ordonné qu'ils soient rémunérés à partir de la date où l'on avait demandé leur nomination, c'est-à-dire au début de l'audience.

Dans l'affaire de la décharge de Burlington, un groupe de citoyens a également demandé que l'expert qu'il avait engagé soit nommé témoin de la Commission. Cette dernière a de nouveau exprimé l'avis que le témoignage d'un expert permettrait de mieux comprendre les questions en litige. Elle a aussi tenu compte des besoins financiers du groupe de citoyens. Par ailleurs, elle était convaincue que le témoin serait en mesure d'agir de façon indépendante et avec impartialité. À la fin de l'audience, les opinions de l'expert avaient divergé considérablement de celles que soutenait le groupe de citoyens et, contrairement à celui-ci, il était en faveur de la de-

mande, sous réserve de certaines conditions très sévères. Aux termes du paragraphe 18(9) de la *Loi sur les évaluations environnementales*, la nomination d'un témoin expert est fonction de l'aide que celui-ci peut apporter à la Commission. Une partie adverse, en particulier si elle n'a pas les moyens de recourir aux services d'un expert, peut être poussée à invoquer cet article pour faire entendre un point de vue différent à l'audience. La Commission se penchera sur la demande et, bien qu'elle tiendra compte de la volonté de la partie de défendre sa position par l'entremise d'un témoin de la Commission, elle sera néanmoins guidée par les critères énoncés dans la Loi. La Commission doit être persuadée de l'utilité d'un témoignage de l'expert. Qu'elle puisse en même temps venir en aide à l'une des parties est certes un facteur important, mais ce n'est pas le facteur décisif.

La nomination de témoins par la Commission s'est avérée profitable jusqu'ici. Même si la Commission a rejeté la thèse principale de son témoin dans la demande relative à l'avenue Finch et approuvé le projet du promoteur, elle a également admis l'apport de l'expert, qui, en recueillant des renseignements et en éliminant certains aspects de l'affaire, l'a aidée à prendre sa décision.



TÉMOINS NOMMÉS PAR LA COMMISSION

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En vertu de la législation provinciale, la Commission peut nommer des témoins à ses propres audiences. Ce pouvoir lui est conféré par une disposition figurant dans chacune des lois la régissant.

Par exemple, le paragraphe 18(9) de la *Loi sur les*

évaluations environnementales se lit comme suit :

« La Commission peut, au besoin, nommer une

ou plusieurs personnes possédant des connaissances

techniques ou particulières sur une question pour

effectuer des enquêtes, en faire rapport à la

Commission et aider celle-ci concernant une question

qui lui est soumise. »

Cette disposition est reproduite, par renvoi, au para-

graphe 33(3) de la *Loi sur la protection de l'environnement*

et au paragraphe 6(3) de la *Loi sur les ressources en eau de*

l'Ontario. Elle se retrouve également à l'article 10 de la

Loi sur la jonction des audiences, où elle s'applique aux

audiences tenues par une commission mixte.

La formulation est suffisamment générale pour per-

mettre à la Commission des évaluations environnementales

de faire appel à une grande diversité de personnes pour

l'assister dans ses fonctions. Cependant, l'article a été

presque exclusivement invoqué pour nommer des témoins

experts. La Commission a engagé un tel témoin en 1987,

année où la communauté urbaine de Toronto a demandé

l'autorisation, en vertu de la *Loi sur les évaluations environ-*

nementales, d'aménager un tronçon de l'avenue Finch

ouest en vue de relier l'avenue Islington au chemin

Albion.

Pendant l'audience, juste avant le début de la contre-

preuve, la Commission a annoncé qu'elle se proposait, de

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sa propre initiative, de nommer un expert en circulation et en transport pour l'aider. Ces deux domaines revêtaient une grande importance dans l'affaire. Après avoir obtenu les commentaires des deux parties et particulièrement ceux du promoteur, la Commission a suspendu les travaux et entrepris de trouver un témoin compétent. Comme elle n'a demandé le nom d'aucun candidat et que les parties n'en n'ont proposé aucun, elle s'est chargée de trouver ce témoin sans l'aide de celles-ci. En décidant de nommer un expert de sa propre initiative, la Commission s'inspirait du précédent créé lors de l'enquête de 1985 sur les BPC. La procédure avait été très différente aux audiences précédentes. Par exemple, au cours de l'audience sur la décharge de Ridgely en 1981 et de celle sur la décharge de Burlington en 1984, l'une des parties avait présenté une motion pour la nomination d'un spécialiste et la Commission avait demandé et reçu des suggestions de candidats. Dans toutes les causes, sauf celle portant sur la demande de Burlington, au moins deux candidats éventuels ont été interrogés avant que la Commission n'arrête son choix.

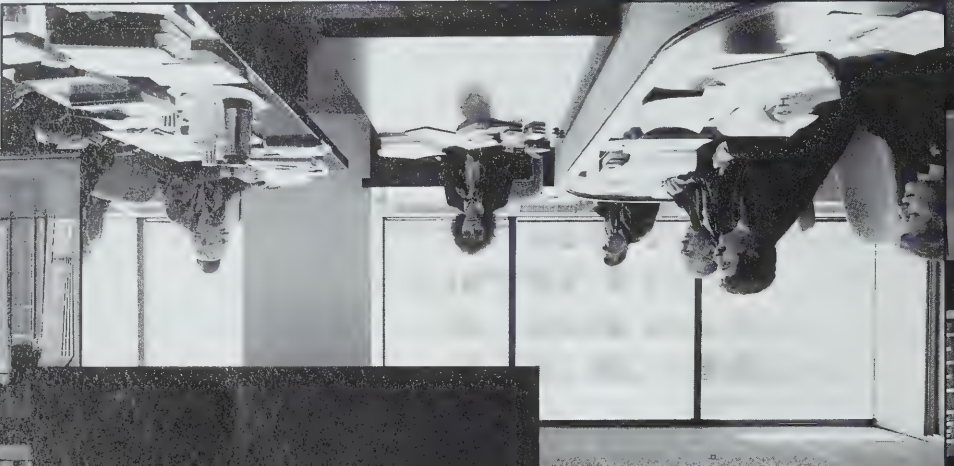
Les entrevues sont dirigées par diverses personnes — des membres de la Commission et des avocats — et le secrétaire de la Commission est parfois présent. La fonction de ce dernier consiste à assurer la liaison entre la Commission et les candidats quant aux arrangements ultérieurs. À l'entrevue, on présente une vue d'ensemble de l'audience aux candidats, dont on peut juger les compétences et déterminer s'ils entendent des préjugés ou s'ils se trouvent ou risquent de se trouver en situation de conflit d'intérêts. Les honoraires et les dates sont également abordés. Enfin, on fait bien comprendre aux candidats que les experts doivent donner en toute indépendance d'esprit leur témoignage et parvenir à leurs conclusions comme bon leur semble.

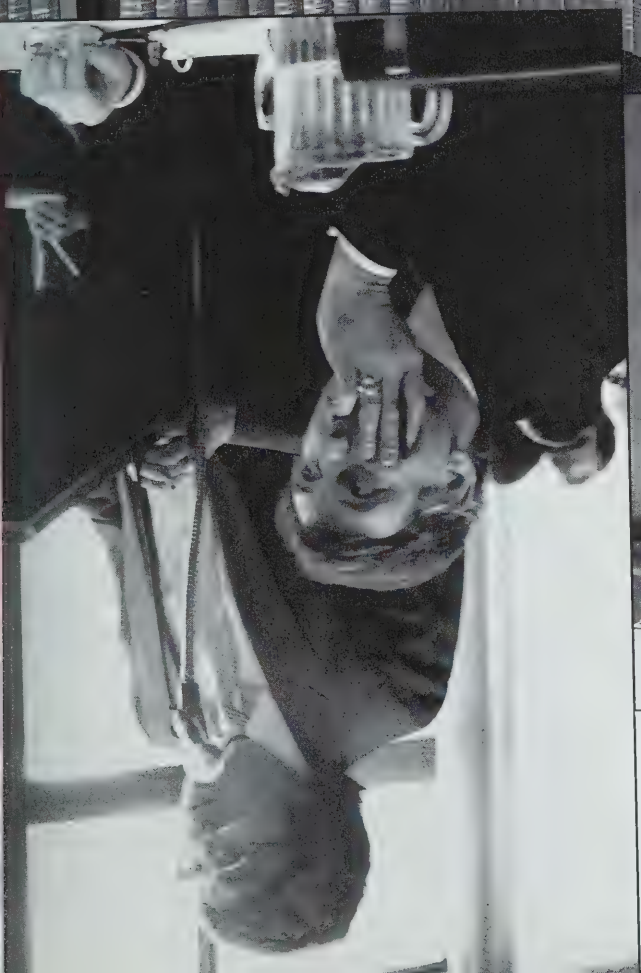
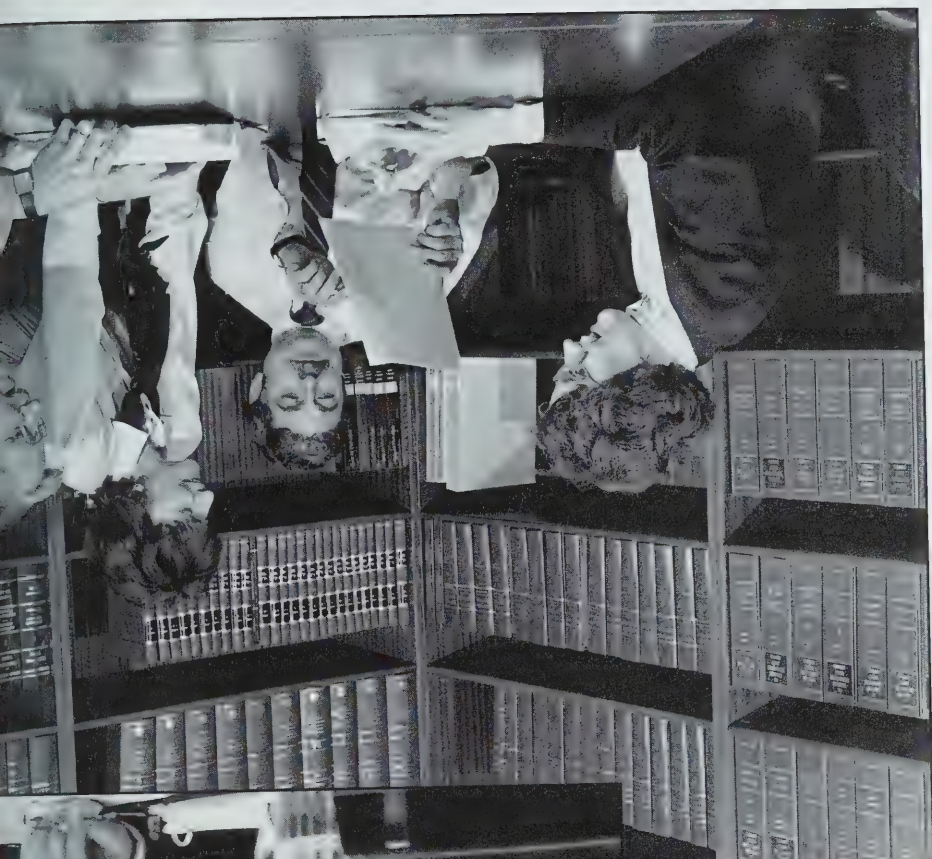
Dans l'affaire de l'avenue Finch (à l'instar de l'audience sur la décharge de Burlington), un contrat de services a été signé par le candidat choisi et un représentant de la Commission. Selon ce document, l'expert devait examiner les pièces et la transcription des témoignages et rédiger un rapport sur les points figurant dans son mandat. Le document et le mandat ont été déposés à l'audience.

Une fois nommé, l'expert n'a eu aucun rapport direct avec la Commission, et toute communication entre les deux s'est effectuée en séance publique à l'audience ou par l'entremise du secrétaire de la Commission. Les limites aux formalités de l'audience et aux questions de procédure.

La Commission a distribué le rapport de l'expert à toutes les parties à l'audience dès sa réception. Elle ne considère pas ce genre de rapport comme un rapport de la Commission et celui-ci ne fait l'objet d'aucun traitement préférentiel. Il s'agit d'une pièce comme une autre que l'on dépose à l'audience, car la Commission rend public tout élément de preuve. Par ailleurs, le rapport est soumis au même examen minutieux de la part des parties et de la Commission que tout autre élément.

À l'audience sur l'avenue Finch, la Commission a nommé un avocat pour représenter son témoin. Elle





Remboursement des frais

Il se peut que la Loi soit modifiée de manière à permettre le remboursement des frais, mais, pour le moment, la Commission ne peut procéder à un remboursement que si elle fait partie d'une commission mixte. Le remboursement des frais est important aux yeux de la Commission, puisqu'il permet la représentation équitable et efficace de tous les points de vue au cours de l'audience.

Appel et révision des décisions de la Commission

La Loi sur les évaluations environnementales et la Loi sur la jonction des audiences renforcent des dispositions analogues sur la révision des décisions de la Commission et de la commission mixte. En vertu de la première loi, le Ministre peut modifier une décision de la Commission, en tout ou en partie, ou lui en substituer une autre. Il peut en outre exiger la tenue d'une nouvelle audience. Quant à la Loi sur la jonction des audiences, elle permet à quiconque est autorisé à comparaître ou à participer à une audience devant la commission mixte d'interjeter directement appel auprès du Cabinet. Tout appel doit normalement être interjeté dans les 28 jours qui suivent la décision de la Commission.

En vertu de la Loi sur la protection de l'environnement et de la Loi sur les ressources en eau de l'Ontario, la décision revient au directeur des autorisations; on ne peut donc en appeler des recommandations de la Commission. Cependant, le promoteur d'un projet peut en appeler de la décision du directeur auprès de la Commission d'appel de l'environnement.





avis d'audience doit être distribué à tous ceux et celles qui sont susceptibles d'être touchés par le projet. Cette diffusion complète est essentielle si l'on veut que l'audience soit équitable, et la Commission doit veiller à ce que personne ne soit omis.

Par conséquent, l'avis est rédigé de manière à satisfaire non seulement aux prescriptions de la loi mais aussi aux principes de justice naturelle. Il est publié dans les journaux locaux et régionaux bien avant la tenue de l'audience. Il est également envoyé par la poste à quiconque — municipalités, autres groupes et particuliers — serait directement touché par la question à l'étude.

Information publique

Il arrive, quand la situation l'exige, que la Commission prenne des dispositions en vue d'aider la population à obtenir des renseignements sur l'audience et la marche à suivre. Ainsi, elle peut obliger le promoteur à ouvrir des centres d'information à des endroits convénables ou, comme dans le cas des audiences sur la gestion du bois d'œuvre, elle peut établir un service d'information téléphonique permettant à ceux et celles que cela intéresse d'écouter chaque jour un message enregistré sur l'évolution du dossier.

Réunion préliminaire

Il est possible que la Commission organise, lorsque les causes sont complexes, une réunion préliminaire afin de rencontrer les parties intéressées et de discuter des questions de procédure. Cette réunion est en outre l'occasion pour les participants de préciser leurs inquiétudes et de

Audience préliminaire

À l'instar de la réunion préliminaire, l'audience préliminaire est annoncée publiquement, mais elle revêt un caractère un peu plus officiel puisque la Commission peut y régler des questions de procédure.

L'audience préliminaire et la réunion préalable permettent toutes deux :

- d'identifier les parties et les participants;
- de définir les questions en litige;
- d'organiser l'échange des documents pertinents;
- d'étudier les avantages qu'offre le dépôt des témoignages et comptes rendus d'interrogatoire;
- de définir une méthode à cette fin;
- de trouver les témoins et d'établir la nature de leurs dépositions;
- de se faire une idée de la durée de l'audience et de décider à quel moment commencera l'audition des témoins.

Déclaration des témoins

Au cours de l'audience, la Commission peut exiger la préparation et l'échange de déclarations des témoins si les dépositions ont un caractère technique. Cette mesure permet à chaque partie de prendre connaissance des sujets qui seront abordés. Elle permet également d'éviter les interruptions et les retards dans les travaux, et d'éclaircir les questions en litige.

Interrogatoires

Des interrogatoires — des demandes écrites de renseignements présentées par une partie à une autre — sont souvent distribués avant l'audience. Ils s'avèrent utiles dans les situations où, par exemple, un témoin a besoin de faire des recherches ou des calculs avant de pouvoir répondre à une question. En effet, on perdra bien du temps si un témoin doit répondre à une question qui l'oblige à effectuer des calculs compliqués ou à chercher un document obscur. Les interrogatoires permettent également de noter rapidement les informations non connues. Ils permettent aux parties d'obtenir des renseignements qui les aideront à préparer leur cause; et ils accélèrent les procédures des témoignages.

Témoins experts

Chaque des lois régissant la Commission autorise celle-ci à engager des experts. Comme on le verra plus loin dans le présent rapport, la Commission en a retenu plusieurs récemment pour diverses audiences.

La Commission engage ces experts de sa propre initiative ou à la demande d'une des parties. Il faut simplement que le témoin puisse permettre à la Commission de mieux comprendre les questions en litige.

La Loi sur la jonction des audiences prévoit un mécanisme qui englobe un certain nombre d'autres lois. Lorsque une question d'ordre environnemental y est assujettie, la Commission peut être invitée à prendre part à une commission mixte et elle aura alors plus de pouvoirs que si elle siègeait seule.

Ainsi, aux termes de la *Loi sur la protection de l'environnement*, la Commission joue un rôle purement consultatif, les décisions étant prises par le directeur des autorisations. Mais quand une commission mixte tient une audience sur la même question, elle a le pouvoir de décision et peut approuver ou rejeter la demande. En outre, les dispositions relatives aux appels prévues par la *Loi sur la*

jonction des audiences. Une décision de la commission mixte devient définitive 28 jours après qu'elle a été rendue, à moins qu'on ait interjeté auprès du Cabinet, alors qu'une décision prise uniquement par le directeur des autorisations en vertu de la *Loi sur la protection de l'environnement* est susceptible d'appel devant la Commission d'appel de l'environnement.

La Loi sur la jonction des audiences permet également le remboursement des frais, pourvoir incisant dans les lois régissant la Commission. Les commissions mixtes ont ainsi dédommagé les intervenants dans un certain nombre d'affaires jusqu'à ce jour, dont ceux qui tout récemment ont participé aux audiences sur les activités du Sud-Ouest d'Ontario Hydro. Les montants ont été accordés en raison de l'apport de la partie intéressée à l'audience, in-

dépendamment de la position qu'elle défendait. Les audiences découlant de la Loi sur la jonction des audiences portent généralement sur des projets tombant sous le coup de la Loi sur les évaluations environnementales, de la Loi sur la protection de l'environnement et de diverses lois sur l'utilisation du sol. Elles peuvent viser la Loi sur l'aménagement du territoire, la Loi sur la Commission des affaires municipales de l'Ontario, la Loi sur l'expropriation ou la Loi sur les municipalités.

risque de créer une nuisance, s'il n'est pas dans l'intérêt public ou s'il représente un danger pour la santé ou la sécurité de quelqu'un.

Lorsque le directeur lui demande de faire des recommandations au sujet d'une proposition, la Commission rédige un rapport à son intention, rapport qui résume les renseignements et les points de vue présentés à chaque audience et qui renferme ses conseils et les raisons de ces derniers. Cette loi et la Loi sur les ressources en eau de l'Ontario ont ceci de particulier qu'elles obligent l'ensemble des membres de la Commission à étudier le projet de rapport préparé par ceux qui ont tenu l'audience; après examen, la Commission dans son ensemble présente son rapport au directeur.

Loi sur les ressources en eau de l'Ontario

En vertu de la *Loi sur les ressources en eau de l'Ontario* et de la *Loi sur la protection de l'environnement*, le rôle de la Commission consiste à donner son avis et à présenter ses recommandations au directeur des autorisations pour l'aider à prendre une décision quand un promoteur demande un certificat d'autorisation.

Aux termes de la *Loi sur les ressources en eau de*

L'Ontario, une audience publique peut avoir lieu lorsqu'une municipalité désire construire une station d'épuration des eaux d'égout ou étendre sa station dans une autre municipalité ou dans une zone non constituée en municipalité. Il est également possible qu'une audience publique soit exigée si une municipalité souhaite aménager une usine de traitement des eaux d'égout sur son propre territoire.

demandes qui lui sont présentées en vue de définir et de désigner une zone en tant que zone de service public d'eau ou zone de service public d'égout.

Pouvoirs de prise de décision et de remboursement des frais en vertu de la Loi sur la protection de l'environnement et de la Loi sur les ressources en eau de l'Ontario

Au printemps de 1988, des modifications étaient proposées à ces deux lois, modifications qui permettraient à la Commission de statuer sur toute demande qu'elle entend. Si l'Assemblée législative les approuve, la Commission ne présentera plus de recommandations au directeur, mais rendra elle-même les décisions. On pourra alors en appeler de celles-ci auprès du Cabinet ou de la Cour divisionnaire. Par ailleurs, la Commission aurait aussi le pouvoir de rembourser les frais en vertu des deux lois.

Loi sur les enquêtes publiques

À l'occasion, par voie de décret, la Commission doit tenir des audiences en vertu de la *Loi sur les enquêtes publiques*. Cette loi permet d'entendre les témoignages des intéressés sur les questions d'intérêt public non visées par une autre loi.

Le Cabinet peut nommer une commission d'enquête sur toute question susceptible d'influer sur le bon gouvernement de l'Ontario, la gestion des affaires publiques ou l'administration de la justice. S'il s'agit d'une question d'ordre environnemental, il se peut que ce soit la Commission qui soit appelée à diriger les audiences.

Loi sur les évaluations environnementales

Dans la *Loi sur les évaluations environnementales*, l'en-

vironnement est défini non seulement comme l'environnement naturel mais également comme les conditions sociales, économiques et culturelles ainsi que les bâtiments, ouvrages, machines et autres dispositifs de fabrication humaine. Cette loi vise la protection, la conservation et la gestion intelligente de l'environnement en Ontario.

Ce vaste mandat donne à la Commission des évaluations environnementales le pouvoir d'autoriser ou de rejeter des projets sur renvoi des demandes à leur égard par le Ministre. La Loi s'applique aux projets du gouvernement

provincial et des municipalités, mais non à ceux du secteur privé, sauf s'ils sont désignés expressément par le Ministre. La Commission prend des décisions et fait des recommandations en vertu de plusieurs lois différentes, mais celle-ci est la seule à exiger du promoteur qu'il présente une évaluation environnementale. Il s'agit d'un document décrivant en détail le projet, ses répercussions et toute mesure atténuante pouvant en découler. Le document d'évaluation doit en outre proposer des solutions de

échange aux projets et aux moyens de les exécuter et faire état de leurs effets éventuels. La Commission peut demander une fois l'évaluation achevée, une audience peut avoir lieu si on l'a demandée, à moins que le Ministre, usant des pouvoirs discrétionnaires que lui confère la Loi, ne juge qu'une audience serait inutile ou retarderait indument les choses. Sur autorisation du Cabinet, le Ministre peut également accorder une exemption et dispenser ainsi les parties de l'évaluation et de l'audience. Cette exemp-

tion ne sera accordée que si le Ministre est d'avis que l'application normale de la Loi ne serait pas dans l'intérêt public.

La Loi prévoit également des évaluations environ-

nementales de portée générale. Cette méthode permet de regrouper des projets de moindre importance dont l'examen individuel entraînerait une charge administrative écrasante. S'il y a lieu, on peut toujours faire avancer et étudier à part certains projets d'une évaluation de portée générale.

Une vaste gamme de projets se présente à une évaluation de portée générale. Les projets provinciaux et municipaux de construction routière ont été parmi les premiers à être évalués de cette façon; depuis, on l'a fait pour un certain nombre d'autres demandes qui visaient par exemple des installations d'élimination des déchets solides, des barrages, des digues et des trajets pour les canots. La série d'audiences sur la gestion du bois d'œuvre qui ont commencé tout récemment constituent un autre exemple d'une évaluation environnementale de portée générale sur l'utilisation des terres de la Couronne dans plusieurs régions de l'Ontario.

Loi sur la protection de l'environnement

La Commission a moins de pouvoirs en vertu de la

Loi sur la protection de l'environnement, dont l'objectif consiste à assurer la protection et la conservation de l'environnement naturel, qu'elle n'en a aux termes de la *Loi sur les évaluations environnementales*. La compétence de la Commission, décrite dans la partie V de la Loi, porte exclusivement ici sur les systèmes de gestion des déchets et les lieux d'élimination des déchets.

Le Règlement 309 établi en application de la *Loi sur la protection de l'environnement* précise les modalités à cet égard. Il définit le terme « déchets » et régit l'emplacement et l'exploitation des lieux d'élimination et des systèmes de gestion des déchets.

Bien que ceux-ci doivent être autorisés en vertu de la Loi, la Commission n'a aucun pouvoir de décision en la matière, rôle exclusif du directeur des autorisations. Cependant, lorsqu'une demande de certificat d'autorisation est déposée, le directeur peut demander à la Commission de tenir une audience et de lui faire part de ses recommandations. Si une proposition porte sur l'élimination de déchets industriels liquides ou de déchets dangereux transportés, ou bien sur des quantités de déchets équivalant à la production d'un tonne de plus de 1 500 personnes, une audience publique est alors obligatoire, quoique le directeur puisse passer outre à cette disposition dans une situation d'urgence.

Dans le rapport qu'elle remet au directeur, la Commission fait souvent des recommandations relatives à la gestion des déchets. Elles pourront porter sur les prescriptions techniques à envisager, les garanties financières de la population, et ainsi de suite. On trouvera de plus amples renseignements sur l'application des conditions d'autorisation dans les pages suivantes du présent rapport.

Par ailleurs, la Commission peut recommander au directeur de ne pas accorder une autorisation si le projet ne se conforme pas à la Loi ou à l'un de ses règlements, s'il



ROBERT B. EISEN,

ANNE KOVEN

MICHAEL I. JEFFERY,
C.R.

DOUGLAS JAMES KINGHAM

MARY G. MUNRO

ELAINE B. TRACEY

Robert B. Eisen, c.r., est vice-président à temps plein de la Commission. Il a obtenu son baccalauréat en sciences politiques et en économie de l'Université de Toronto en 1951 et son diplôme en droit d'Osgoode Hall en 1955. Il a été professeur à temps partiel à cet endroit, où il a enseigné le cours d'administration au barreau. Il a exercé le droit commercial depuis son inscription au barreau jusqu'à sa nomination à la Commission en mars 1981.

*Anne Koven est un membre à temps partiel de la Commission en avril 1987. Mme Koven détient une maîtrise en droit de l'environnement d'Osgoode Hall. Elle est actuellement coprésidente du Comité du droit de l'environnement de l'Association internationale du barreau, présidente du Council of Canadian Administrative Tribunal, éditeur canadien du *Environmental and Planning Law Journal* et rédacteur en chef du *Canadian Journal of Administrative Law and Practice*.*

Douglas James Kingham est vice-président à temps plein de la Commission. Il a une formation scientifique poussée en physique et en chimie et travaille en gestion de l'environnement depuis 1968. Il a été directeur général d'Environnement Canada pour la région de l'Ontario. Il a participé aux négociations sur la réduction des substances chimiques dans la rivière Niagara et a été président canadien du Conseil de la qualité de l'eau de la Commission mixte internationale.

Mary G. Munro est vice-présidente à temps plein de la Commission et représente Burlington. Elle est infirmière diplômée, joue un rôle actif dans les questions communautaires et environnementales depuis de nombreuses années et a siégé à divers conseils et commissions. Mme Munro a été conseillère municipale, conseillère régionale et maître de la ville de Burlington. Elle a été nommée à la Commission le 1^{er} septembre 1981.

Elaine B. Tracey est un membre à temps partiel d'Eganville; elle a été nommée à la Commission le 29 octobre 1987. Mme Tracey s'inscrit vivement aux questions locales d'environnement et a présenté des exposés sur la gestion des déchets dans son canton. Elle participe au projet de nettoyage de la rivière d'Eganville, est présidente de l'Association commerciale régionale d'Eganville et secrétaire du Comité du centenaire d'Eganville.

MEMBRES

DE LA COMMISSION DES ÉVALUATIONS ENVIRONNEMENTALES

Alan William Roy est un membre à temps partiel de l'Université de la Guelph. Il a été nommé à la Commission en avril 1987.

Grace Patterson est vice-présidente à temps plein de la Commission. Avant sa nomination en 1986, elle exerçait le droit de politiques, a été conseillère auprès du ministère de l'État aux Affaires urbaines, d'Environnement Canada et de la Commission de réforme du droit du Canada. Il a travaillé à l'échelle internationale pour les Nations Unies, l'OMS et l'UNESCO. Il a été élu en 1986 président de l'Association canadienne de la recherche sur les évaluations environnementales. Mme Patterson donne un cours sur le droit de l'environnement à l'école de droit de l'Université Queen's.

O. P. DWIVEDI

O. P. Dwivedi est un membre à temps partiel de l'Université de la Guelph. M. Dwivedi, professeur de sciences politiques, a été conseiller M. Martel a enseigné l'histoire jusqu'en 1967, année où il a été élu à l'Assemblée législative. M. Martel a été député néo-démocrate de Sudbury-Est jusqu'en 1985 et leader parlementaire de son parti de 1978 à octobre 1985. Au cours de son mandat, il a accordé considérablement d'importance aux questions environnementales. M. Martel est l'auteur de deux rapports importants sur la sécurité au travail. Il a été nommé à la Commission le 9 mars 1988.

ELIE W. MARTEL

Elie W. Martel est vice-président à temps plein de la Commission et représente Capreol. M. Martel a enseigné l'histoire jusqu'en 1967, année où il a été élu à l'Assemblée législative. M. Martel a été député néo-démocrate de Sudbury-Est jusqu'en 1985 et leader parlementaire de son parti de 1978 à octobre 1985. Au cours de son mandat, il a accordé considérablement d'importance aux questions environnementales. M. Martel est l'auteur de deux rapports importants sur la sécurité au travail. Il a été nommé à la Commission le 9 mars 1988.

PAUL F.J. EAGLES, M.C.I.P.

Paul F.J. Eagles, m.c.i.p. est un membre à temps partiel de Cambridge. M. Eagles détient un baccalauréat en zoologie et en maîtrise en zoologie et en mise en valeur des ressources de l'Université de Guelph et un doctorat en aménagement régional de Waterloo, où il est enseignant actuellement. M. Eagles a publié de nombreux ouvrages sur l'écologie appliquée, la gestion des ressources et les loisirs de plein air.

RICHARD A. PHARAND, C.R.

Richard A. Pharand, c.r. est un membre à temps partiel de Sudbury. M. Pharand est bilingue et est l'associé principal de l'étude Pharand, Kuyek. Il est l'un des membres fondateurs de l'Association des juristes d'expression française de l'Ontario. M. Pharand est membre de l'Advocates' Society, de la Criminal Lawyers Association, de l'Association du barreau canadien et de la Sudbury Law Association.

ALAN WILLIAM ROY



Services Limited, Ville de North Bay, Walker Brothers
Quarries Limited).
La Commission a en outre créé un certain nombre
de comités chargés de veiller à la gestion du financement
des intervenants, financièrement consenti par le gouverne-
ment pour les audiences de la commission mixte et de la
Commission des évaluations environnementales.

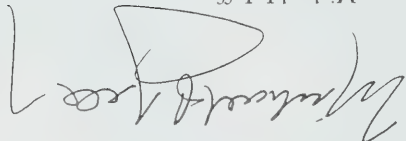
Que réserve l'avenir?

Les prochains mois seront les plus mouvementés de
l'histoire de la Commission. Comme nous l'avons men-
tionné précédemment, les audiences relatives à la gestion
du bois d'oeuvre du ministère des Richesses naturelles ont
commencé à Thunder Bay en mai et se poursuivront dans
environ 14 villes de la province. Même si l'audience sur la
déchargé régionale de Halton se terminera à la fin de l'an-
née, les demandes analogues présentées à la commission
mixte par la municipalité régionale de Peel ainsi que par la
ville de Meaford et le canton de Saint-Vincent seront en-
tendues dès septembre ou octobre 1988.

On s'attend également que la commission mixte
étudie au début de l'automne la demande de la TSI
Trintek Systems Inc. relativement à la production
d'énergie à partir de déchets, de même que celle sur le
prolongement du chemin Derry.

Une commission mixte devrait entreprendre les audi-
ences tant attendues sur la Société ontarienne de gestion
des déchets au cours des premiers mois de 1989; des re-
tards ne nous permettent cependant pas d'en prévoir la
date. Il est possible que certains des nombreux projets de
gestion des déchets, ou quelques-uns de leurs éléments,
soient présentés à la Commission au cours des prochains
mois, et un certain nombre de demandes ordinaires de-
vront également être étudiées. Malgré un accroissement
spectaculaire de sa charge de travail, la Commission est ré-
solvée à continuer d'être accessible à la population et de
s'acquitter de ses responsabilités législatives de la manière
la plus efficace qui soit.

Le président,



Michael I. Jeffery, C.R.

gestion du bois d'oeuvre afin d'occuper sur place des
questions administratives se rapportant à cette affaire in-
portante et complexe. Un service téléphonique sans frais a
été mis à la disposition de la population à cet égard. Ceux
et celles que cela intéresse peuvent donc entendre chaque
jour un message enregistré sur l'évolution de la situation.
On peut maintenant communiquer plus facilement avec la
Commission depuis que celle-ci s'est dotée d'un télé-
copieur, et il sera peut-être possible d'accéder par télé-
communications dans un proche avenir au système infor-
matisé de recherche d'information de la Commission.

Le règlement intérieur de la Commission a été adop-
té officiellement en janvier 1988, sous forme de règle-
ment d'application de la Loi sur les évaluations environ-
nementales. Le processus de consultation publique en-
trepris à ce sujet par la Commission en 1987 est décrit en
détail dans le dernier rapport annuel et ne sera donc pas
repris ici; la Commission souhaite quand même exprimer
à nouveau sa gratitude à ceux et celles qui ont participé à
cette importante réalisation. La dernière version provi-
soire du règlement a été enbêtement revue par un comité
créé à cet effet conformément à la Loi sur l'exercice des
compétences législatives, et elle a reçu peu de temps après l'ap-
probation du Conseil des ministres. On peut se procurer
le règlement à un prix modique, en anglais et en français,
à la librairie du gouvernement de l'Ontario et aux bu-
reaux de la Commission à Toronto.

Puisque le règlement intérieur est un document plus
ou moins juridique, la Commission a fait paraître un
guide du citoyen. On peut obtenir sans frais ce livret ins-
truit de 20 pages, en anglais ou en français, aux bureaux
de la Commission. On y a pris soin de vulgariser plusieurs
des questions souvent soulevées par la population sur la
compétence de la Commission et les modalités des
audiences.

La Commission se tient également en rapport avec
les autres tribunaux administratifs. Ainsi, elle a organisé en
mars 1988 une table ronde à laquelle les membres d'un
certain nombre d'entre eux ont été conviés. Rodenick A.
Macdonald, doyen de la faculté de droit de l'Université
McGill, le professeur John Evans, de l'école de droit
Osgoode Hall, et Donald Brown, C.R., de Blake, Cassels
& Graydon, ont alors parlé des répercussions des conclu-
sions de la Commission Ouellette sur les tribunaux admi-
nistratifs et de l'importance, pour ceux-ci, d'interpréter les
lois les créant à la lumière de la Charte des droits et
libertés. La discussion animée qui a suivi montre l'intérêt
que suscitent les échanges de ce genre ainsi que leur né-
cessité, et la Commission se propose d'en organiser
d'autres à l'avenir.

Au cours de l'exercice 1987, la Commission a reçu
encore une fois un certain nombre de demandes impor-
tantes. À ce propos, la demande de décharge présentée
par la municipalité régionale de Halton à la commission
mixte est en cours d'étude et devrait être réglée plus tard
cette année. Par ailleurs, les décisions ont été rendues en
juillet 1987 et en février 1988 dans l'affaire de deux de-
mandes concernant des voies publiques, l'autoroute 416
et le prolongement de l'avenue Finch ouest. Enfin,
plusieurs demandes de décharge ont également été
présentées à la Commission et réglées au cours de cette
période (Boise Cascade Canada Ltée, Quinte Sanitation

MÉSSAGE DU PRÉSIDENT

« Dans notre monde en constante évolution, les transformations suivent l'allure impétueuse et insouciante de l'homme plutôt que l'évolution lente de la nature. »
Titre de *Silent Spring* de Rachel Carson.

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année écoulée a été une année active à l'échelle tant na-

tionale qu'internationale; en effet, de nombreux pays ont intensifié leurs efforts en vue de lutter contre les ravages de la pollution industrielle.

Bien que le fait saillant de 1987 ait été la publication

du rapport de la Commission mondiale sur l'environnement et le développement, la commission Brundand, d'autres réalisations auront également des répercussions importantes dans l'avenir.

En octobre 1986, le Conseil canadien des ministres des Ressources et de l'Environnement a créé le Groupe de

travail national sur l'environnement et l'économie, dont le mandat consistait à :

« amorcer un dialogue sur l'intégration de l'environnement et de l'économie, entre les ministres de l'Environnement du Canada, les cadres supérieurs de

l'industrie canadienne, ainsi que les représentants des organisations environnementales et des milieux universitaires. »

Le groupe de travail a publié son rapport en septembre 1987. Selon lui, un développement économique

durable et compatible avec l'environnement est essentiel au maintien de la prospérité économique au Canada et dans le monde entier. Ce thème se retrouve dans tout le

rapport, qui contient 40 recommandations bien précises sur l'intégration de l'environnement et de l'économie.

Pour la première fois, les chefs des gouvernements et de l'industrie ont accepté la responsabilité d'un dialogue continu, conférant à cette initiative une crédibilité et un optimisme jusqu'ici non permis. Du reste, l'adoption de beaucoup des recommandations a donné aux autres pays indus-

trialisés un exemple concret de coopération accrue entre les pouvoirs publics, l'industrie, les organismes non gouvernementaux et la population.

La Commission des évaluations environnementales continue de s'acquitter de son mandat qui consiste à concilier les intérêts des divers secteurs de notre société. Elle a subi, l'an dernier, un certain nombre de changements sur le double plan de l'administration et de sa composition.

En octobre 1987, Susan Tanner et Joan Simpson, deux membres à temps partiel, ont quitté la Commission. Elles ont été remplacées par Elaine Tracey et Paul F. Eagles pour des mandats d'un an et de deux ans respectivement.

Ellie W. Martel, de Capreol, est devenue vice-président à temps plein en mars 1988.

Par ailleurs, le mandat de trois vice-présidents à temps plein, Robert Eisen, c.r., Mary Munro et Grace Patterson, a été renouvelé. De même pour celui de

Richard Pharrand, c.r., membre à temps partiel de Sudbury. Par conséquent, depuis le 31 mars 1988, la Commission comprend

six membres à temps plein, dont le président, et six membres à temps partiel. Il est probable qu'elle recrutera d'autres membres au cours de l'année en prévision des nombreuses audiences importantes qui se tiendront à l'automne.

Sur le plan administratif, la Commission a poursuivi plusieurs des initiatives entreprises l'an dernier. Grâce à sa restructuration complète et à la simplification des audiences, elle progresse rapidement vers son objectif premier : accroître son efficacité et ses services au public.

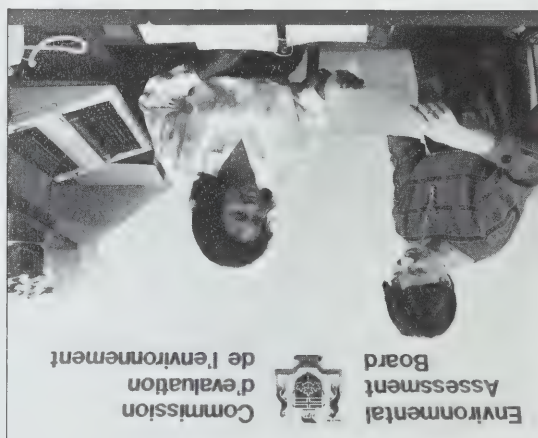
En janvier 1988, la Commission a emménagé dans ses nouveaux locaux situés au 2300, rue Xonge à Toronto. Ces derniers ont été conçus de manière à mieux répondre aux besoins de la Commission et de la population. Une grande salle d'audience pleinement équipée, qui sert également de salle de conférence pour les réunions ordinaires de la Commission, a été utilisée pour la première fois à la fin de janvier pour une série de réunions préliminaires dans le cadre des audiences sur la gestion

du bois d'œuvre, entreprises récemment. La nouvelle bibliothèque offerte à la Commission tous les ouvrages de recherche et de référence de base qu'il lui faut. Avec l'aide d'experts-conseils, le personnel a terminé dernièrement une étude détaillée sur l'aménagement d'un système

avancé de traitement de texte et de recherche d'information, étude mentionnée dans le rapport de l'an dernier, et un système intégré devrait être installé au début de l'automne. Grâce à ce nouveau système, les avocats, les groupes d'intérêt et la population pourront bientôt avoir accès aux rapports, décisions et autres documents de la Commission par l'entremise d'un terminal qui sera mis à la disposition du public dans une des salles de consultation à proximité de l'aire de réception.

La Commission a également pris d'autres mesures qui lui permettront d'améliorer son administration, particulièrement dans le domaine des communications. Ainsi, Doug Mander a été engagé comme agent de liaison pour les audiences. Il a été affecté à la série d'audiences sur la

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Pour l'exercice
clos le
31 mars
1988

A stylized, monochromatic illustration of a wetland landscape. The foreground shows a dense line of reeds and grasses. In the background, there are several tall, thin, rectangular structures, possibly chimneys or towers, rising from a body of water. The overall tone is muted and artistic.

COMMISSION DES ÉVALUATIONS ENVIRONNEMENTALES RAPPORT ANNUEL

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Environmental Assessment Board Annual Report

***Fiscal Year
ended
March 31st
1989***



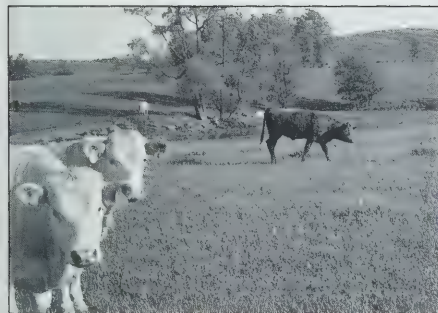
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Environmental Assessment Board Annual Report 1988-89

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Chairman's Message

EVER SINCE *homo sapiens* came down from the trees, our relationship with the environment has been fragile and problematic. However, future historians will very likely note 1988-89 as a year in which that relationship was thoroughly tested.

On the national level, Canada was confronted with a devastating PCB fire in St.-Basile le Grand, and with the effects of a major oil spill in Puget Sound, which caused serious environmental damage along the shores of Vancouver Island. As well, the United States suffered the worst oil spill in North American history when the Exxon Valdez ran aground in Prince William Sound, putting some 38 million litres of crude oil into the water and thence onto hundreds of miles of Alaskan coastline — with untold effects on the aquatic environment.

Globally, 1988-89 saw widespread international attention focussed on problems such as the depletion of Brazil's rainforests, the ongoing damage to the planet's ozone layer caused by the continuing release of fluorocarbons, and also on the increasingly widespread scientific concern over the causes and consequences of the "greenhouse effect." The environment continues to take a severe beating everywhere, but at long last there are signs that the global community is finally realizing the scope of the problem, and finally recognizing that its only means of survival — *our* only means of survival — lies in an all-out, unified assault on the root causes of environmental degradation. Throughout the industrialized world, policymakers appear to be embracing the central theme of the Brundtland Report — that "sustainable and environmentally

sound economic development is essential to continued economic prosperity."

With environmental concerns ranking high in the public consciousness, it is not surprising that the Environmental Assessment Board continues to play an increasingly important role, working with government, industry, and the public to ensure that projects coming before the Board for approval are environmentally sound.

To meet its responsibilities, the Board has continued to develop, adapting both to legislative changes and to changes in the nature of the applications brought before it.

On the Board itself, the appointment of Barbara Doherty of Toronto as a Vice-Chair increased the Board's full-time membership, including the Chair, to seven. In the Board's complement of six part-time members, Dr. O. P. Dwivedi left in April of 1989 and was replaced in early May by Esther Jacko of Birch Island, who will serve for a term of three years.

Last year the administrative headquarters of the Board in Toronto moved to new premises at 2300 Yonge Street, Toronto. This year the reorganization associated with that move has been substantially completed, including a further expansion of office facilities. Following the normal technological growing pains, our new word processing and data retrieval system is almost fully operational, and has been expanded to include advanced fiscal accounting capabilities which enable the Board to handle its responsibilities under the *Intervenor Funding Project Act*. A database comprising the Board's reports, decisions, and other relevant material is being created, and should be available for the public's use within a few months. As well, our administrative staff is being increased in order that the Board can deal

expeditiously and effectively with its caseload of hearings.

The Board's jurisdiction has been changed in important ways by various legislative initiatives; this will be discussed in detail later in this report. For example, amendments to the *Environmental Protection Act* and the *Ontario Water Resources Act* confer on the Board decision-making powers under those statutes, where formerly the Board only had the power to submit recommendations to the Director of Approvals, an official of the Ministry of the Environment, who then made the actual decision. The *Intervenor Funding Project Act*, enacted in December 1988 and proclaimed on April 1 of this year, fulfilled the government's long-standing commitment to provide access to the hearing process for those who do not otherwise have the financial resources necessary to participate. This legislation, which is in effect for a trial period of three years, also gives the Board legislative authority to award costs at the conclusion of a hearing and deems it not bound by the criteria used by courts of law in awarding such costs.

The *Environmental Assessment Act*, one of the most important Acts under which the Board operates, is currently undergoing a thorough review which will probably lead to substantial amendments in the near future. Meanwhile, the Board has proceeded on its own with a number of procedural initiatives designed to improve and streamline the hearing process. Among these are new procedures to establish and clarify the scope of issues in dispute, and measures designed to expedite oral testimony at hearings, thus shortening the hearing process where possible. Procedural reform, begun last year with the development of the Board's Rules of Practice and Procedure,

remains a priority given the sheer number of extremely complex applications now before the Board.

The Environmental Assessment Board and the Ontario Municipal Board held a joint workshop to exchange ideas dealing with a variety of issues connected with the hearing process. This event included an informative address by Mr. Justice Robert F. Reid of the Ontario Supreme Court on the adaptation of judicial pre-hearing conference procedures to administrative proceedings such as our own. The Board also invited Professors Audrey Armour and Peter Homenuk of the Faculty of Environmental Studies, York University, to address it on the subject of social impact assessment at one of its monthly Board meetings. Finally, the Board plans to hold another in its series of discussion "round tables" later this year.

What Lies Ahead?

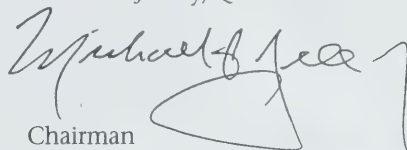
The Board will be involved in a number of major hearings over the next year or two, one of which—the Timber Management class environmental assessment — is now entering its second year. Procedural meetings have been held on the Ontario Waste Management Corporation's hazardous facilities application; that hearing is expected to begin towards the end of 1989. Additionally, a number of landfill applications will be before the Board, as will the first application involving the mobile destruction of PCBs.

During the next few months the Board will amend its Rules of Practice and Procedure to incorporate changes resulting from its own recent procedural initiatives, the *Intervenor Funding Project Act*, and the Board's recent acquisition of the power to award costs.

The Board will also continue its efforts to develop, in collaboration with the Ontario Municipal Board, a comprehensive set of Rules of Practice and Procedure applicable to Joint Board proceedings.

As the Environmental Assessment Board prepares to enter the 1990s, it is confident that it has in place the administrative, procedural, and legislative framework it needs to deal effectively, efficiently, and fairly with the matters set before it. In meeting these challenges, however, it will not sacrifice its commitment to safeguard the public interest.

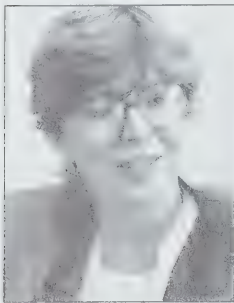
Michael I. Jeffery, Q.C.


Chairman



Members of the Environmental Assessment Board

Barbara Doherty is a full-time Vice-Chairman from Toronto appointed to the Board in November 1988. She graduated from the University of Western Ontario with a B.Sc. in 1977 and from Osgoode Hall Law School in 1980. She was called to the bar in 1982. Ms Doherty practiced civil litigation in Toronto and appeared as Counsel before a wide variety of courts and administrative tribunals until her appointment to the Board.

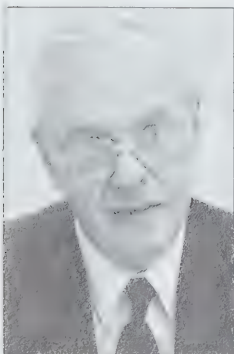


Dr. Paul F.J. Eagles, MCIP, is a part-time member from Cambridge. Dr. Eagles holds a B.Sc. in Biology, an M.Sc. in Zoology and Resource Development from the University of Guelph and a Ph.D. in Urban and Regional Planning from the University of Waterloo, where he is presently a faculty member.



Dr. Eagles has published extensively on applied ecology, resource management and outdoor recreation.

Robert B. Eisen, Q.C., is a full-time Vice-Chairman of the Board. He graduated from the University of Toronto in 1951 with an Honours B.A. in Political Science and Economics, and from Osgoode Hall Law School in 1955. He served as part-time instructor in the Bar Admission Course at Osgoode Hall and practiced commercial law from the time of his call to the bar until his appointment to the Board in March 1981.



Esther M. Jacko is a part-time member of the Board from Birch Island. Ms Jacko is the Lands Manager for the Whitefish River First Nation Council. Her field of expertise is Indian Lands Management. She also has extensive background knowledge of the Indian Treaties and history of Manitoulin Island. Ms Jacko is the Chairperson of the Inter-Reserve Lands Management Committee. She has been involved in environmental affairs for several years, having served as the native spokesperson for the Algoma-Manitoulin Nuclear Awareness Group. Ms Jacko is also a member of the North Channel Preservation Society, which is endeavouring to preserve the historical and environmental integrity of Nehahupkung, also known as Casson's Peak, in Baie Fine. Ms Jacko was appointed to the Board in April 1989.



Michael I. Jeffery, Q.C., is a recognized authority in the administrative law field and holds an LL.M. degree in environmental law from Osgoode Hall. Mr. Jeffery practiced law in Toronto for fourteen years prior to his appointment to the Board in 1981. He is currently Co-Chairman of the Environmental Law Committee of the International Bar Association, Canadian Editor of the *Environmental and Planning Law Journal*, Editor-in-Chief of the *Canadian Journal of Administrative Law and Practice* and a past Chairman of the Council of Canadian Administrative Tribunals.



Dr. Douglas James Kingham has been involved in environmental work for more than 20 years, first as a water quality research scientist and manager, then as Director of the federal government's Environmental Emergencies Program. He developed the Canadian Ocean Dumping Control bill and was a negotiator for certain Law of the Sea provisions dealing with the marine environment, while at the same time chairing the Anti-Pollution Working Group of the Intergovernmental Maritime Organization. Before joining the Board in 1987, Dr. Kingham was Director-General for the Ontario Region of Environment Canada, and was the Canadian Chairman of the IJC Water Quality Board.



Anne Koven is a part-time member from Toronto. Appointed to the Board in April 1987, Ms Koven holds a Masters degree in Public Administration from Queen's University. She was Research Director of the Upper Ottawa Landfill Site study, commissioned by the Ontario Ministry of Health, from 1981 to 1986. She has worked in the mining industry and with the Ontario Advisory Council on Occupational Health and Safety.



Elie W. Martel is a full-time Vice-Chairman of the Board and member from Capreol. Mr. Martel was a teacher and high school principal prior to 1967, when he was elected to the Legislative Assembly. Mr. Martel served as the NDP member for Sudbury East until 1987 and was House Leader for his party from 1978 to October 1985. As a member he did extensive work on environmental issues. Mr. Martel is the author of two major reports on safety in the workplace. He was appointed to the Board in March 1988.



Mary G. Munro is a full-time Vice-Chairman of the Board and a member from Burlington. She is a Registered Nurse by profession and has been active in community and environmental affairs for many years, having served on various boards and commissions. Mrs. Munro has been City Alderman, Regional Councillor and Mayor of the City of Burlington. She was appointed to the Board on September 1, 1981.



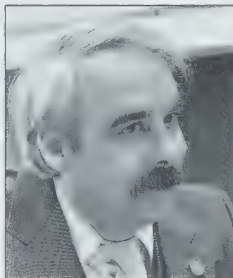
Grace Patterson is a full-time Vice-Chairman of the Board. She practiced environmental law with the Canadian Environmental Law Association until her appointment to the Board in 1986. She was a director of several environmental organizations, and served on the Science Advisory Board of the International Joint Commission and on the Canadian Environmental Assessment Research Council. Ms Patterson lectures on environmental law at Queen's University Law School.



Richard A. Pharand, Q.C., is a part-time member from Sudbury. A bilingual Sudburian, he is the senior partner of the law firm of Pharand Kuyek. He was a founding member of L'association des juristes d'expression française de l'Ontario. Mr. Pharand is a member of the Advocates' Society, the Criminal Lawyers Association, the Canadian Bar Association and the Sudbury Law Association. He is the Legal Aid Area Director for the Districts of Sudbury and Manitoulin. Mr. Pharand was appointed to the Environmental Assessment Board on April 14, 1986.



Alan William Roy is a part-time member from Brighton. A science graduate from Sir George Williams University, Montreal, and Queen's University, Kingston, Mr. Roy has long scientific experience in the area of fisheries protection. He is currently environmental director for the Union of Ontario Indians and was appointed to the Board in April 1987.



Elaine B. Tracey is a part-time member from Eganville. Mrs. Tracey was appointed to the Board on October 29, 1987. She was active in community environmental concerns and has presented briefs on waste management in her township. She was a participant in the Eganville riverfront improvement project and a past President of the Eganville and District Business Association.



Intervenor Funding

THE ENVIRONMENTAL ASSESSMENT Board has been convinced for some time that providing financial assistance for participants in its hearings is of great benefit to the process. Well-structured and accountable representation of the public interest assists the Board by ensuring that all issues of concern are addressed, and that there is a degree of balance in the evidence for the Board to consider. Furthermore, funding well in advance of the hearing helps affected parties plan for more meaningful participation. It makes the process more efficient and accessible, and in our experience shortens the hearing time.

The Government of Ontario has undertaken major initiatives in this respect. Since 1984, advance funding has been provided by Orders-in-Council for fifteen hearings in which the Board has been involved. With one exception, each Cabinet Order has authorized the Board to distribute a specific amount of money among potential participants who qualify under the eligibility criteria included in the Order. The amounts provided have ranged from \$30,000 per hearing to the \$750,000 provided for the Timber Management hearing currently under way in Thunder Bay.

For the Ontario Waste Management Corporation hearings the Order-in-Council for funding differs from the others. In the OWMC case, the Board was authorized to make recommendations to the government on the total amount of funds to be provided, along with recommendations for amendments to the eligibility criteria to be applied, and to distribute the funds once approval had been given by government.

In December 1988, the Funding Panel recommended a funding program to the Minister of the Environment which consisted of distributing about \$3.8 million dollars over a period of two years to

three intervenors: the Regional Municipality of Niagara, the Township of West Lincoln, and the Ontario Toxic Waste Research Coalition. The Panel's proposed program included a recommendation that the criteria be amended to provide that legal fees be eligible for reimbursement at the same rates used by government when it engages private counsel. The original Order-in-Council had required that Legal Aid Plan rates apply.

The Ontario Cabinet approved the proposed program with the exception of the recommendation respecting legal fee rates (estimated to cost in the order of \$600,000). As a result, the funding program will provide \$3.2 million dollars to the three funded parties to assist in their preparation for and participation in the OWMC hearing.

It should be noted that OWMC had previously provided funding to potential participants in the amount of \$2.4 million dollars. The bulk of these OWMC funds were provided to the two municipalities proposed as the site of the undertaking.

The government's decision to embrace the concept of intervenor funding for environmental hearings culminated in the enactment of the *Intervenor Funding Project Act*, 1988, which was proclaimed effective on April 1, 1989. This legislation constitutes a three-year pilot project that establishes a process under which potential intervenors in any hearing before the Environmental Assessment Board, the Ontario Energy Board, or a Joint Board established under the *Consolidated Hearings Act*, can apply for funding from the proponent in order to participate more effectively in the hearing. The criteria upon which the funding may be granted are set out in the Act. Cases to which it should apply are those which affect a significant segment of the public, and involve the public interest

rather than a narrow personal interest. The Funding Panels comprise Board members other than those who will consider the application itself. The panel must consider whether the intervenor has tried to raise funds from other sources and has an established record of concern for the issues, as well as the intervenor's proposal for the use of the funds and the intervenor's proposed fiscal controls over those funds. The proponent may oppose the granting of intervenor funds based on the general criteria given above, and also on the grounds that such an award of funding would result in significant financial hardship for the proponent.

The Board has established Rules of Practice and Procedure under the Act. These deal with the timing of public notice which must specify the right of intervenors to apply for funding, the procedures for applying for intervenor status prior to the establishment of a Funding Panel, the right of a proponent to object to providing intervenor funding, and the information which must be included in an application for funding.

Part II of the legislation amends the provisions of the *Environmental Assessment Act* to give the Board power to award costs at the conclusion of any proceeding before it, and specifically provides that in awarding costs, the EAB, the Ontario Energy Board, and a Joint Board are not limited to the considerations that govern awards of costs in any court.

The legislation makes it clear that the Act does not apply to hearings for which public notice of hearing was given prior to the date the Act came into force. This excludes the use of the power to award costs at the Timber Management class EA hearing.

Jurisdiction

The Environmental Assessment Act

The *Environmental Assessment Act* (EAA) is the legislation which establishes planning requirements for proponents of undertakings, and gives the Board a broad jurisdiction over the planning of an undertaking as well as the physical and technical features of that undertaking. This legislation defines the "environment" not only as the natural environment, but also as the "social, economic and cultural conditions" and "any building, structure, machine or

other (man-made) device." It states that the purpose of the Act is the "protection, conservation and wise management" of Ontario's environment.

The Board is empowered to approve or reject undertakings on referral of an application from the Minister of the Environment. Provincial and municipal undertakings are subject to the Act, but private sector undertakings are not, except those specially designated by the Minister. Currently, private sector waste management undertakings, including incinerators, are subject to the Act.

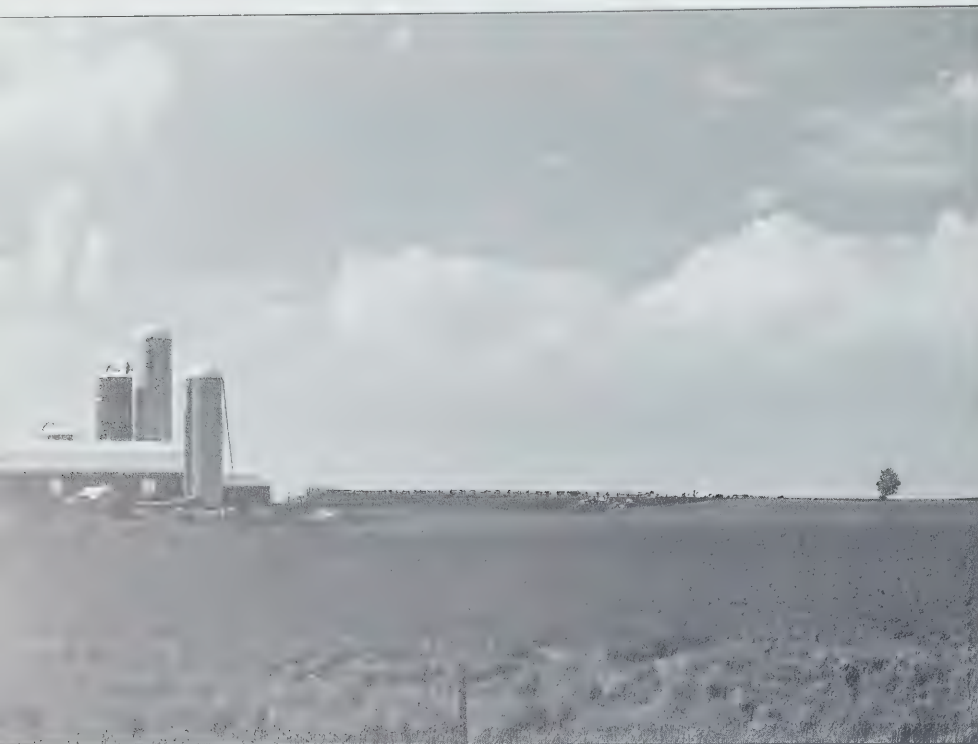
If a proposed undertaking is subject to the EAA's jurisdiction, the applicant must submit an environmental assessment. This document describes in detail the proposed development, its predicted impacts, and any mitigating measures that will follow. The assessment must also present alternatives to the undertaking and alternative *methods* of carrying out the undertaking, along with predictions of the consequent impacts. The Board can request amendments to the assessment before approving it.

When the assessment is completed, a hearing may be held if one has been requested. The Minister may decide, however, that a hearing is unnecessary or will cause undue delay. With the approval of the Cabinet, the Minister can also grant

an exemption dispensing with both the assessment and the hearing, if in the Minister's opinion the application of the normal processes of the Act would not be in the public interest.

In addition to individual proposals, the EAA also provides for class environmental assessments. The purpose of this type of assessment is to avoid the poten-





tially overwhelming administrative burden which would be created if many smaller projects, having minor or similar impacts, were each processed singly. Instead, they are assessed as a group. If necessary, individual projects in a class assessment group can always be "bumped up" in priority and given an independent examination.

Many types of proposals are suitable for "class" environmental assessments (EAs). Provincial and municipal road projects were among the first to be dealt with in this fashion, and subsequently there have been class EAs for other groups of applications, such as solid-waste disposal projects, dams and dykes, and canoe routes. The Board is currently conducting a hearing on the class EA for timber management on Crown lands in Ontario. It is the first such wide-ranging assessment to be categorized as a class assessment, and will undoubtedly set

precedents for comparable program or policy-type assessments in the future.

The Board has the power to determine its own practices and procedures under the Act, and in January of 1988 the Board's first "Rules of Practice and Procedure" were formally enacted in the form of a regulation. Since April 1, 1989 the Board also has had the authority to award costs to parties engaged in environmental assessment hearings. In awarding costs under the Act, the Board is not limited to the considerations governing cost awards in the courts. The cost power is a powerful tool, the use of which may encourage participants in the hearing process to conduct their cases expeditiously and responsibly.

The Environmental Protection Act

Under Part V, sections 30 and 32 of the *Environmental Protection Act* (EPA), the Board is authorized to hold hearings

on proposed waste management systems and waste disposal sites. The decisions resulting from these hearings are considered in light of the objective of the legislation, which is "the protection and conservation of the natural environment."

Until June 1988 the Board made recommendations, rather than decisions, under this legislation. The Board was granted decision-making and cost-granting powers under the EPA pursuant to the *Environmental Statute Law Amendment Act*, S.O. 1988, c.54. The cost-granting powers were later repealed by the *Intervenor Funding Project Act*, S.O. 1988, c.71, which then replaced them with similar but expanded powers allowing the Board to use criteria broader than those used in the courts. The intent was to give the Board the ability to award costs to "unsuccessful" parties if they substantially contributed to the hearing.

The Board's decisions are now appealable to the Ontario Cabinet or, on a question of law, to the Divisional Court of Ontario. These appeal provisions mean that the Environmental Appeal Board no longer has a role in the appeal structure as it relates to this Board. It continues to have a role in reviewing decisions made without a hearing by a Director appointed under the EPA.

The statutory provisions determining whether a hearing is discretionary or mandatory remain unchanged. When an application involves the disposal of hauled liquid industrial waste or hazardous waste, or deals with domestic waste equivalent to the output of more than 1500 persons, a public hearing becomes mandatory, although the Director may dispense with this requirement in an emergency. In other situations the Director can, but need not, require the Board to hold a hearing.

The criteria the Board uses to determine whether an application should be

approved are contained in section 38 of the EPA. Essentially, this says that an application may be refused or conditions imposed:

- if a proposed undertaking fails to comply with the Act or with any of its regulations;
- if it may create a nuisance;
- if it is contrary to the public interest;
- if it may result in a hazard to any person's health or safety.

Conditions might include, for example, engineering requirements, financial guarantees, a monitoring programme, or provisions for further public consultation.

Following the passage of these amendments, the Board has adopted the practice of instructing the Director of Approvals to impose specific conditions and to communicate the reasons for those conditions in the form provided by the Board. The Board's former practice was to recommend to the Director that he impose such conditions. The new practice requires the parties affected to recommend and discuss at the hearing all of the conditions which they feel should be imposed, since there will be no further opportunities to revise or add detail except on appeal to the Cabinet.

The Ontario Water Resources Act

Under the *Ontario Water Resources Act* (OWRA), the Board is empowered to hold a hearing after receiving notice from the Director under subsection 25(1) or 26(1). These subsections deal with the establishment or extension of sewage works in or into a municipality which is not itself the applicant, or the construction of sewage works within the applicant's own municipality. In the former case a hearing is mandatory, but in the latter instance the Director decides whether or not a hearing should be held. Once he has given notice to the Board, the Board must give public notice of the hearing—including a statement that,

should the Board receive no objection to the application, the application may be determined without a hearing.

The Board's remaining mandate under the OWRA is to conduct hearings on applications for the definition and designation of areas of public water service and public sewage service, and to set rates with respect to those services. The Board need not convene a hearing if no one objects to the proposal once public notice has been given.

Costs may now be awarded by the Board on the same basis that the Board uses under the EPA, and appeal rights are identical under the OWRA and the EPA.

The Public Inquiries Act

Occasionally the Board is required by Order-in-Council to hold hearings under the *Public Inquiries Act*. This Act is intended to provide a public forum for issues of public concern not covered by any other Act.

The Cabinet has the authority under this Act to appoint commissioners to hold a public inquiry into any issues that may affect the good government of Ontario, the conduct of any part of the public business, or the administration of justice. If the issue is environmental, the EAB may be requested to conduct the hearing.

The Consolidated Hearings Act

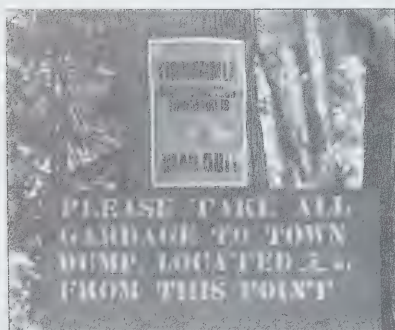
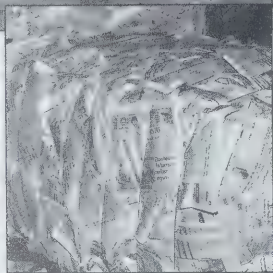
The Consolidated Hearings Act provides a procedural umbrella for twelve specific pieces of legislation. Those most relevant to this Board are the *Environmental Assessment Act*, the *Environmental Protection Act*, the *Expropriations Act* (sections 6, 7, and 8 only), the *Municipal Act*, the *Niagara Escarpment Planning and Development Act*, the *Ontario Water Resources Act*, and the *Planning Act*. The EAB is normally involved with applications under many of these Acts and has been designated, along with the Ontario Municipal Board, as the body from which members of "Joint Boards" under

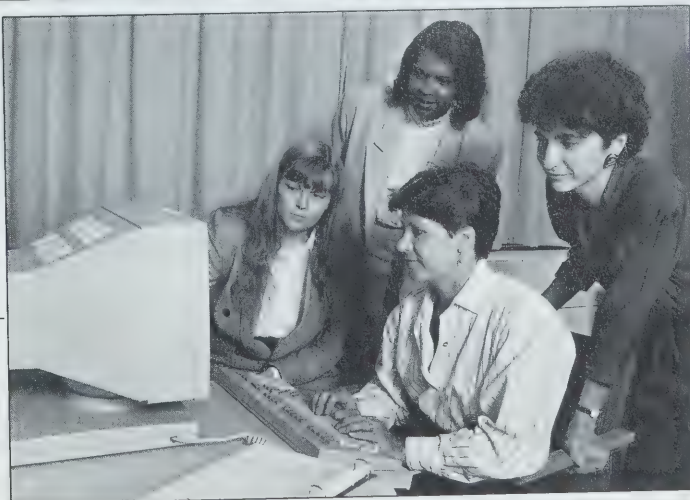
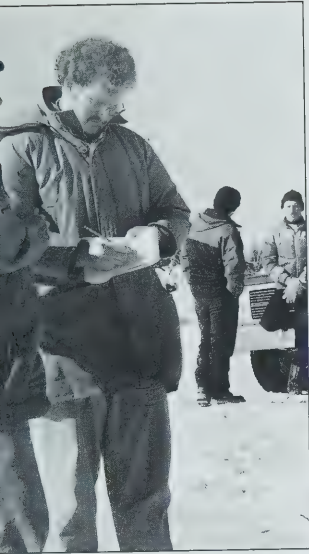
this legislation will be drawn. The Chairmen of the two boards decide whether a Joint Board for a particular hearing will be composed of both EAB and OMB members, or of one or more members from only one of the designated Boards. In any event, members of Joint Boards are not drawn from any other source, even if some other agency or person, such as the Niagara Escarpment Hearing Officer, would normally hold a hearing under one of the pieces of legislation which warrants the application of the *Consolidated Hearings Act*.

Joint Boards under the CHA have cost-granting powers which have been extensively exercised, most recently in relation to the SNC incinerator application and the Halton landfill proposal. These awards have been made on the basis of the particular party's contribution to the hearing process, not in relation to whether the outcome of the hearing reflected the position of the party receiving costs. In the Halton hearing, costs were awarded against parties which, the Board determined, had unjustifiably lengthened the hearing through the submission of irrelevant evidence.

The appeal provisions of the CHA supersede those of the individual Acts that it covers. On the 28th day after it is issued, a Joint Board decision becomes final unless there has been an appeal to the Cabinet.







Streamlining the Hearing Process

OVER THE PAST YEAR we have clearly and repeatedly stated that the Environmental Assessment Board is determined to improve its method of conducting hearings. The Board's work is being increasingly directed toward multimillion-dollar, several-year projects such as the Ontario Ministry of Natural Resources' plan to implement timber management on Crown lands and the Ontario Waste Management Corporation's proposed hazardous waste treatment and disposal facilities in West Lincoln. The Board's hearings are largely funded by taxpayers' dollars; therefore, we believe that lengthy hearings can only be justified if absolutely necessary. The process itself must be maximally efficient. Our responsibility

is to ensure that public funds are being well spent in pursuit of our mission to safeguard the environment.

This commitment to take new procedural initiatives in no way compromises our obligation to protect the right of all participants to a fair hearing. Generally, parties to the Board's hearings have supported streamlining the process. Most of the procedures we have adopted are geared towards getting the evidence before the hearing panel as expeditiously as possible, without prejudicing anyone's case.

The Halton Landfill Case: Where Changes Were Called For

The essential aspects of the Halton landfill application are described later in

this report, in the review of specific cases. It has been suggested that this hearing was excessively long and complicated. It is certainly notable that the hearing lasted 194 days, involved 1,000 exhibits, and generated 50,000 pages of transcript.

An overly lengthy or complex hearing leaves, in its wake, the uneasy feeling that justice has not been well served. The way in which the Halton assessment was handled, and the consequent implications for the hearing, led to just such unease. This in turn led the Hearing Panel to some conclusions about streamlining the process, the better to hold more efficient hearings in the future.

The following are some general areas of principle where improvements could well be made:

1. Where the proponent is applying judgment to evaluation factors, in order to progress from one stage to the next in the assessment process, it must be possible to relate such judgment to the data available at the time.
2. Consistent application of site-selection criteria by the proponent would help to identify truly comparable sites—instead of spending time considering manifestly dissimilar sites, which can be compared only if significantly different fundamental assumptions are made.
3. Two sites should not be brought to the Board for a final selection between them, since this only mobilizes concerned publics around each—battling not only the proponent but each other, in attempts to have the Board select the site in the other's back yard. Such multiple battles consume significantly more time than is consumed at hearings at which only one site is considered.



4. Fundamental changes made by the proponent to screening criteria part way through the process (for example, making engineered containment rather than natural containment a deciding factor) can be supported only if *all* sites under consideration at that point are subject to the new criteria.

5. Ministry of Environment officials responsible for the formal review of environmental assessment documents can play a more vital role in the process by keeping things on track and resolving serious inconsistencies in the application before the review is completed and sent to the Board for a hearing.

6. Counsel must remember that the primary purpose of the hearing is to inform the Board so that it may make a considered decision, not to protect vested "back yard" interests.

7. Public consultation sessions must not merely consist of the proponent talking at the people affected—they must promote a two-way dialogue in which those people's concerns are seriously considered, *even* if not acted upon.

8. Presentation tactics need improvement:

- reports should not be unreasonably withheld
- irrelevant evidence must be avoided
- excessive detail should be avoided
- experts should not be advocates for their clients
- the proponent's approach must be even-handed and obviously fair.

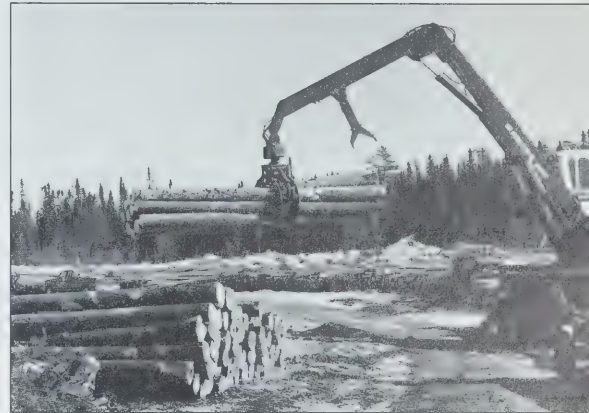
In addition, the Joint Board relayed a message to parties at the Halton landfill hearing about the unacceptable nature of some of the practices it had observed, and awarded costs accordingly. In recognition of this, parties at future hearings

may help to streamline the process themselves.

Timber Management: The First "Class" Environmental Assessment Hearing

The issue at stake is the future of the forest products industry in Ontario. Environmentally sound forestry practices and government regulations are to be designed to provide a secure supply of wood. While these matters are of economic and social importance to the entire province, they are of special concern to northern communities which depend substantially or completely on a healthy timber industry. Interest in the environmental protection of our forests is reflected in the fact that more than fifty groups are represented as parties to the hearings. The hearing is being conducted primarily in Thunder Bay, with additional public hearings planned for fourteen other locations, mostly in the north. Transcripts of the evidence are kept in dozens of locations throughout the province, so that all parties interested in participating in the hearing will be able to do so.

The case being presented by the Ministry of Natural Resources has been in preparation for years. Perhaps not surprisingly, given the important and diverse issues under examination, the evidence is being presented through a lengthy process involving seventeen witness panels, some of which are comprised of as many as nine witnesses. At the summer recess in July, the proponent's case had progressed to witness panel number fourteen; over six hundred exhibits had been submitted, and



almost twenty thousand pages of evidence recorded in transcripts.

The Board has introduced numerous procedural initiatives with the objective of expediting the hearing while at the same time recognizing the complexity of the case and the legal requirement to maintain fairness to all participants. These include such obvious practical steps as qualifying expert witnesses on the basis of their written curricula vitae, rather than time-consuming oral testimony. Provision has been made for agreed-upon statements of fact for noncontentious evidence, again eliminating the need for oral evidence and cross-examination. The Board considered imposing a time limit on oral presentation of the evidence-in-chief, but refrained from doing so to avoid possibly prejudicing the parties following the proponent. It has, however, strongly suggested that the parties voluntarily curtail the amount of time they spend giving oral direct evidence, much of which tends to duplicate the information submitted in the written case.

The Board has introduced procedures challenging the adversarial relationship that historically has been a part of the hearing process. The Board believes that the "element of surprise" is not necessarily productive in a public hearing where the future of the environment is at stake. The proponent is required to submit an executive summary of the important issues covered in its witness statements, and the other parties are to submit statements on those issues raised by the pro-

ponent with which they declare they are not in dispute; those upon which the parties intend to cross-examine; and those which do or do not require further oral explanation. These statements by the proponent and by the other parties are then used in formal "scoping" sessions conducted by the Board prior to the commencement of each witness panel. The purpose of these scoping sessions is to attempt to focus the hearing on the important issues that are actually in dispute.

Finally, early deadlines have been set for all parties to submit concise written summaries of the decisions they intend to seek from the Board, including the draft terms and conditions. The Board believes that a full airing of the objectives of the parties, well in advance of the end of the hearing, will stimulate further useful streamlining of the process, and so speed its conclusion.



The Ontario Waste Management Corporation: The Next Procedural Challenge

Preliminary meetings for the Ontario Waste Management (OWMC) hearing resulted in the Joint Board issuing a number of procedural directives.

The Joint Board has decided to conduct the hearing in phases, organized in advance, in such a way that the presentation of the evidence, and all the examination of any particular subject by all the parties, is completed before proceeding to the next phase.

The proponent has been directed to deliver all of its witness statements, and the reports on which it intends to rely, prior to the commencement of the hearing. Parties other than the proponent are to deliver their witness statements and reports before the commencement of each phase. The prior disclosure of the written material to be examined at the

hearing will allow the parties to be better prepared, and to focus their case more sharply on important issues.

Additional procedures have been designed to speed up the hearing. The parties and their experts are to meet, prior to the beginning of the hearing, and attempt to arrive at an agreed-upon statement of issues, facts, and expert opinions. Where the parties agree that a matter is not in issue, only the minimum evidence necessary to establish the facts for the Board will be led, and cross-examination on that matter will not be required. In considering an award of costs in favour of or against a party, the Joint Board may take into consideration, among other things, whether that party refused to agree that a matter was not in issue when it should have so agreed, and whether the conduct of that party tended to shorten or unnecessarily lengthen the hearing.

Through these and future directives that may be issued by the Joint Board, it is hoped that the OWMC hearing will be one where the issues in dispute are clearly defined; where all of the parties know the case they have to meet prior to the hearing of evidence on that subject; and where the hearing is not prolonged unnecessarily by the introduction of evidence relating to matters upon which there is no real dispute.

The Experience of Other Hearing Panels

Environmental Assessment Board and Joint Board members have been actively proposing and experimenting with improved procedures to streamline the process in every major hearing in which the Board has been involved in the past year. The longer and more complex the hearing, the more necessary these innovations are.

The Trintek incinerator and the Peel landfill panels developed such procedures, but were unable to put them into practice because those hearings were

postponed. Other hearings, including the North Simcoe landfill, Meaford landfill, and Derry Road application, are using the new approaches.

Many of the procedures that have been implemented after discussion and agreement at preliminary hearings, and which are being used at hearings now under way, are similar in approach to those already in place for the Timber Management hearing and the OWMC hearing. Examples of procedures in use are the prefilming of witness statements, including executive summaries and reports; the requirement for notice if a party intends to challenge the qualifications of an expert witness; requirements for parties to file statements of agreement on facts, issues, or evidence; prior submission of the order of testimony, list of experts, and estimated time for examination-in-chief; and the confining of cross-examination of witnesses by parties of like interest to questions of clarification, with no repetition of the examination-in-chief.

Parties to the Board's hearings have supported the concept of streamlining the process because they or their clients were finding the hearings to be too long and too costly. While certain parties may have disagreed with some of the proposals, they have been able to come to a consensus and to agree to accept the majority of the Board's proposals.

The Role of the Preliminary Hearing/Meeting

The importance of a preliminary hearing or meeting can plainly be seen in the foregoing discussion—it is the forum in which the OWMC and other hearing panels arrived at their procedural directions.

The pre-hearing process now routinely involves detailed discussion of the positions of the parties; identification of the matters that will be at issue during the hearing; and the schedule for exchange of witness statements and

interrogatories. The latter describe what the various witnesses are going to say, and also provide an opportunity for other parties to ask, in advance, questions that require detailed references or calculations in order to provide the information requested. Deadlines for delivery of documents, advice respecting the use of consistent units of measurement, reasonable limits on submission of oral evidence, warnings about the criteria that will be used in the consideration of cost awards, and other measures to ensure a fair but expeditious hearing, may also be discussed at this stage.

Establishing rules for the submission of evidence during the hearing itself can best be discussed at the preliminary hearing, since this allows all parties to be treated consistently throughout. Once the hearing itself has begun, it is difficult to implement new procedures because the parties which earlier presented evidence may consequently be treated differently from those coming later. This situation may understandably give rise to objections from one party or another.

The preliminary hearing provides an opportunity for narrowing the many issues that could be examined to the smaller number that are actually in dispute. An example is the requirement for meetings of experts in specific disciplines, taking place after the exchange of witness statements, interrogatories, and answers, but before oral evidence begins, for the purpose of delineating the major questions or differences that will be emphasized at the hearing. Any agreement reached by these experts would be ratified by the parties and submitted to the Board in the form of an agreed statement of fact or through oral evidence of a witness or witness panel, which could even comprise experts from more than one party.

The Board will be looking at ways of adopting pre-hearing conference concepts used by the courts. This would involve a meeting, just prior to the commencement of oral evidence, between the parties and a Board member who is not sitting on that particular hearing, the objective being both to elicit the Board member's views and to encourage parties to abandon positions that appear weak or difficult to prove. The Board is moving toward this approach with caution, recognizing that its mandate is not simply to adjudicate among the parties, but to balance all of the interests at the hearing, bearing always in mind that the objective of the exercise is to achieve the protection, conservation, and wise management of the environment.

The Benefit of Witness Panels

The members of the witness panel are usually experts in their fields and are brought together for the purpose of providing a comprehensive block of evidence. An individual witness may not be able to answer a question fully on a matter that flows from his or her testimony. That answer might not be forthcoming until a later stage in the hearing, leaving the Board and the parties with an incomplete understanding of an issue, waiting until they can fill in the missing pieces. It is this need for streamlining and coherence that the witness panel is designed to address.

The calling of witness panels is left to the discretion of counsel, who must determine whether this form of evidence presentation is appropriate. The circumstances that support the calling of a panel are: overlapping subject matter; a sequential aspect of the evidence to be given by two or more witnesses; and the desire to fill gaps in the evidence of one witness with supplementary evidence supplied by another witness.

A simple example using a two-person panel illustrates the effectiveness of this format. In a hearing involving a landfill

site, the stratigraphy of the site and the chemical characteristics of the ground water are central issues. Evidence on these matters is obtained by boring holes into the ground at various locations on the site. Samples are then sent to a laboratory for analysis. One panel member might be in charge of overseeing the bore-hole program, the dispatch of samples to the laboratory, and the drawing-up of charts using the information provided by the laboratories. The second panel member would then be called upon to interpret the results of the charts. Both are needed to provide a complete picture of the bore-hole program and its interpretation. For example, if there is an unusual or inconsistent reading in the charted results, the Board may wish to determine whether the anomaly is the result of defective sampling or lab technique, or whether the reading is valid and can be explained. In such a case both witnesses are needed together to provide information about the reading.

There is no formula for determining the number of panel members. It has ranged from two to nine in the Timber Management hearing, depending on the subject being discussed and the degree of overlap in the evidence. Both the examiner-in-chief and cross-examiner will, as a rule, direct a question to the witness most qualified to answer. In cross-examination, however, the same question may be put to more than one witness, and in those circumstances different and perhaps conflicting answers may result.

Sometimes a witness will decline to answer, and allow the best-qualified colleague present to address the matter instead. At other times, counsel for the witnesses may object to the same question being put to more than one witness. In the latter case the Board would have the responsibility of deciding whether one or more of the witnesses should be asked to respond. The criteria that would be used by the Board include the degree of

overlap in areas of expertise, the type of evidence given in direct examination, and whether a witness is qualified to answer the question posed to him. The curricula vitae of the witnesses can be used to ascertain which of the experts should answer a given question.

Two novel uses have been made of witness panels. The first is a broadly-constituted panel, having on it many or all of the experts engaged in a hearing, gathered together for the purpose of answering questions put to them by the general public. Members of the public who are unable to attend a hearing on a daily basis may, at special day and evening sessions set up for their convenience, ask the experts to respond to their particular concerns and questions. This format, along with individual presentations of evidence, enables members of the public to be directly involved in the hearing process.

The second innovative use of witness panels may occur at the conclusion of a long hearing. The proponent, in presenting reply evidence, may wish to address a number of issues raised in the earlier testimony. Rather than addressing these matters by examining individual witnesses, counsel may put them together as an omnibus panel to respond to a wide range of concerns. This type of "wrap-up panel" efficiently completes the proponent's presentation and fills in gaps in the evidence.

Witness panels are versatile tools in the hearing process. Their use has contributed to a more expeditious and straightforward process by providing a better understanding of evidence in the earlier stages of a hearing.

Review of Specific Cases



The Halton Landfill Application

The first landfill application under the EAA was the Regional Municipality of Halton's application heard by a Joint Board, for the establishment of a twenty year landfill to serve the needs of the entire region.

The hearing was understandably complex, with evidence ranging from social impact assessment to hydrogeochemistry. The hearing was also prolonged by the fact that the proponent had identified two manifestly different sites in two different municipalities (the City of Burlington and the Town of Milton) as, nearly, equally acceptable.

The Board hearing the matter found one of the sites to be unsuitable for landfill on a number of counts, one of the more important of which was the predicted movement of leachate from the site and the uncertainties about the eventual fate of contaminants in that leachate.

While it was necessary to consider evidence concerning the project's possible impact on cultural matters, such as archaeology, heritage features, and community uses in the areas under discussion, the Board found that these matters did not determine the issue.

More crucial were the issues of the proposal's impact on the social and physical environment. Although it was the Board's finding that social impacts had not been well assessed, there was enough evidence to support the conclusion that there would be serious but differently-distributed impacts in the two areas; in the rural area near the Town of Milton the impact would be quite high for a small number of people, whereas selecting the proposed site in the City of Burlington would cause lesser impact on a larger number of people.

Most of the evidence concerned the hydrogeological suitability of the two

sites. In simple terms, this evidence addressed the question of whether or not the land beneath the two proposed sites was a suitable foundation for a landfill. The Milton site was on a clay-till base, while the site in Burlington was to be established on an abandoned fractured-shale quarry. After hearing many months of evidence, the Board found the following to be of considerable significance in deciding the matter:

- "1. The hydrogeology of the area must be comprehensible to the Board.
 2. The loss of contaminants should be minimal (and preferably zero), as a result of either natural containment or engineered works.
 3. Natural containment and attenuation of contaminants is preferable to engineered containment and attenuation.
 4. If it is predicted that contaminants may move away from a landfill site, then the postulated contamination-migration pathways should be predictable.
 5. It should be demonstrated that predicted migration of leachate from the site will have no significant adverse impact on surface waters.
 6. Monitoring of contaminant escape and migration pathways should be straightforward.
 7. There should be the highest possible confidence in the effectiveness of contingency measures to intercept and capture lost contaminants."
- (From pp. 109-112 of the Decision)

Having considered these and other matters, the Board found that the Burlington site was not hydrogeologically suitable for landfill, but the site in Milton was.

Because this was the first municipal landfill application to be fully tested under the *Environmental Assessment Act*, the Board set forth its views on the assess-

ment's problems in a separate section following the decision in its "Reasons for Decision, and Decision" document. The section, entitled "Environmental Assessment Process Considerations," is described under the heading *Streamlining the Hearing Process* in this Annual Report.

Costs were awarded in favor of two intervenors, in light of the assistance they rendered to the Board. Costs were not only awarded against the proponent in this decision, but also against two other parties, as the Board found that at times their actions had unnecessarily consumed the time of the Board and of all the hearing's other participants.

Petro-Sun/SNC: Private Sector Environmental Assessment

In March 1987, the Ministry of the Environment announced that all major private and public sector proposals for Energy From Waste (EFW) programmes and waste incineration facilities would be subject to the *Environmental Assessment Act* (EAA). The proposal by Petro-Sun International/SNC Inc. for an EFW incinerator for Peel Region was the first such facility to be designated by regulation as an undertaking to which the Act applies.

That undertaking was the subject of a public hearing before a Joint Board pursuant to the *Consolidated Hearings Act* because planning and financial approvals were required in addition to the environmental approvals. The Joint Board's decision was rendered in October 1988.

During the course of the hearing the Board heard expert opinion and legal argument regarding the acceptability of the environmental assessment and, in particular, in respect of the requirements for private sector proponents under the EAA.

The debate at the hearing centred on whether the purpose of the Petro-Sun/SNC proposal had been properly defined. Since the purpose of the undertaking was stated to be energy produc-

tion, only alternatives to the undertaking which would produce energy were evaluated. The intervenors submitted that the EFW facility was in fact a waste management facility and that, therefore, alternative waste management systems should have been identified and assessed. The proponent submitted that it was in the energy production business, and that waste management systems were not within its business mandate; therefore, alternative waste management systems did not need to be examined as reasonable alternatives.

The Joint Board found that the EAA requirements for the description of the undertaking and the purpose of the undertaking should be met by for private and public sector proponents alike. It emphasized that the undertaking should be described accurately and in language that the public understands. In this case, the undertaking had been properly described in the environmental assessment, but the definition of purpose had not dealt with the undertaking's waste management function. Therefore, alternatives to the waste management function, such as waste reduction, recycling, and landfilling, had not been identified or evaluated.

The Board stated:

"The identification of alternatives to the undertaking should be determined by the purpose of the functions of the undertaking, not by the purpose of the business aims of the private proponent."

The Board concluded that the EAA should be applied in a consistent manner to public and private sector proponents. Private sector proponents are expected to identify reasonable alternatives to the proposed undertaking as a part of the planning process. The evaluation of the alternatives can, quite properly and of necessity, be conducted in the context of the economic well-being and business mandate of the proponent. But the potential environmental impact of the proposed undertaking and of rea-

sonable alternatives should also be examined as rigorously for private sector proposals as for public sector proposals.

The Board, in its final analysis, found that the environmental assessment as submitted to the Minister was inadequate because waste management options had not been identified or evaluated.

However, a great deal of evidence concerning alternative waste management systems was presented to the Board during the hearing, by witnesses from the Region of Peel and from the Ministry of the Environment. The Peel witnesses presented data drawn from the Region's Waste Management Master Plan, which was at that time in its final draft stage. This information related to the waste quantities generated by the Region, its proposed methods of managing the waste stream, and the goals of and staging for its reduction and recycling programmes. The Ministry witnesses gave evidence about the province's experience with waste reduction and recycling schemes.

The Board stated its view that an environmental assessment must fulfil the purposes of the EAA and must provide sufficient evidence upon which the Board can base a decision. In the Petro-Sun/SNC case, the Board found that the environmental assessment, comprising not only the environmental assessment submitted to the Minister but also all of the evidence admitted by the Board at the hearing, was acceptable. At the end of the hearing, the evidence before the Board was sufficient to allow the Board to make a decision and to fulfil the requirements of the Act.

The Joint Board gave approval to the Petro-Sun/SNC facility to proceed, with several stringent conditions attached to that approval. Of particular importance were requirements for extensive monitoring of the EFW facility's combustion efficiency, air emissions, and the composition of ash residues, to ensure that the

facility would operate as predicted.

The Board also expressed the opinion that the Waste Management Master Plans currently under development by many municipalities should be subject to the Environmental Assessment Act. Such a procedure would reduce the length of complex hearings that are generated when each component of the Master Plan is the subject of a separate environmental assessment. If the Waste Management Master Plans were to be examined in the context of the Act, their purpose and alternatives could be thoroughly canvassed. Individual components, such as EFW facilities or landfill sites, could then be analyzed in the context of an approved Master Plan.



Other Sources of Information

- Available from:** The Board Secretary
Environmental Assessment Board
P.O. Box 2382
2300 Yonge Street
Suite 1201
Toronto, Ontario M4P 1E4
Tel: (416) 323-4806
- *The Environmental Assessment Board Citizens' Guide*
 - *The Environmental Assessment Board Rules of Practice and Procedure* (\$2.50)
(The Rules of Practice and Procedure are also available through the Ontario Government Bookstore.)
 - *Intervenor Funding Rules of Practice and Procedure*
- Available from:** Environmental Assessment Branch
Ministry of the Environment
250 Davisville Avenue
5th Floor
Toronto, Ontario M4S 1H2
Tel: (416) 323-4629
- *A Citizens' Guide to Environmental Assessment*
 - *EA Update*
- Available from:** Ontario Government Bookstore
880 Bay Street
Toronto, Ontario M7A 1N8
Tel: in Toronto, 965-6015
Other communities, 1-800-268-7540
- *Environmental Protection Act*
 - *Environmental Assessment Act*
 - *Consolidated Hearings Act*
 - *Ontario Water Resources Act*
 - *Public Inquiries Act*
 - *Intervenor Funding Project Act, 1988*

Autres sources d'information

On peut se procurer auprès du :

Secrétaire

Commission des évaluations environnementales

C.P. 2382

2300, rue Yonge

Bureau 1201

Toronto (Ontario) M4P 1E4

Téléphone : (416) 323-4806

- Le Guide du citoyen de la Commission des évaluations environnementales
- Le Règlement intérieur de la Commission des évaluations environnementales (2, 50 \$)

(Ce dernier ouvrage est également en vente à la librairie du gouvernement de l'Ontario.)

- Le Règlement intérieur d'aide financière aux intervenants

On peut se procurer auprès de la :

Direction des évaluations environnementales

Ministère de l'Environnement

250, avenue Davisville

5^e étage

Toronto (Ontario) M4S 1H2

Téléphone : (416) 323-4629

- Le Guide à l'intention du citoyen - évaluations environnementales
- EA Update (en anglais seulement)

On peut se procurer auprès de :

Publications Ontario

880, rue Bay

Toronto (Ontario) M7A 1N8

Téléphone : à Toronto, 965-6015

Ailleurs, 1-800-268-7540

- La Loi sur la protection de l'environnement

- La Loi sur les évaluations environnementales

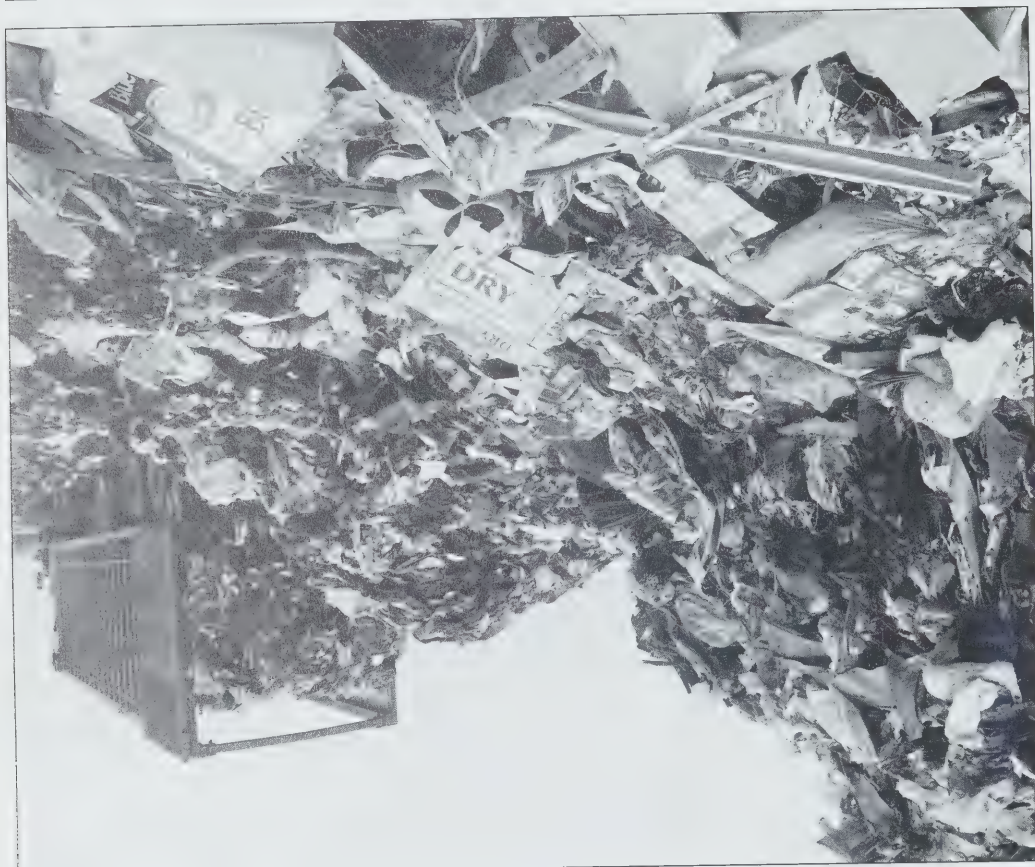
- La Loi sur la fonction des audiences

- La Loi sur les ressources en eau de l'Ontario

- La Loi sur les enquêtes publiques

- La Loi de 1988 sur le projet d'aide financière aux intervenants





la durée des audiences complexes qui sont convoquées quand chaque élément d'un plan directeur fait l'objet d'une évaluation environnementale distincte. Si les plans directeurs de gestion des déchets étaient examinés dans le contexte de la loi, leur objet et les solutions de rechange pourraient être évalués de façon approfondie. Chacun des éléments, tels que les installations de transformation des déchets en énergie ou les décharges, pourrait alors être analysé dans le cadre d'un plan directeur approuvé.

autorisation de plusieurs conditions rigoureuses, en particulier l'obligation de contrôler intensivement l'efficacité de combustion de l'installation, les émissions dans l'atmosphère et la composition des cendres résiduelles, pour veiller à ce que l'installation fonctionne tel que prévu. La commission a également exprimé l'avis que les plans directeurs de gestion des déchets en voie d'élaboration par de nombreuses municipalités devraient être assujettis à la Loi sur les évaluations environnementales. Une telle mesure réduirait

évaluations environnementales, la Commission a exposé ses vues sur les problèmes liés à l'évaluation dans une section distincte de sa décision intitulée « Environnemental Assessment Process Considerations », qui est décrite sous la rubrique *Simplification du processus d'audience* dans le présent rapport annuel.

Evaluation environnementale du secteur privé : Petro-Sun/SNC

En mars 1987, le ministère de l'Environnement annonçait que toutes les propositions

importantes du secteur privé et du secteur public aux fins de la création de programmes de transformation des déchets en énergie ou d'installations d'incinération de déchets seraient assujetties à la *Loi sur les évaluations environnementales*. La proposition de Petro-Sun International/SNC Inc. visant un incinérateur de transformation des déchets pour la région de Peel a été la première installation de ce genre à être désignée par règlement comme une entreprise au sens de la loi.

Cette entreprise a fait l'objet d'une audience publique devant une commission mixte établie en vertu de la *Loi sur la fonction des audiences*, parce que des autorisations liées à la planification et au financement étaient nécessaires en plus des autorisations environnementales. La commission mixte a rendu sa décision en octobre 1988.

Pendant l'audience, la commission a entendu l'opinion d'experts et des arguments juridiques sur l'acceptabilité de l'évaluation environnementale et, en particulier, les exigences régissant les promoteurs du secteur privé en vertu de la *Loi sur les évaluations environnementales*.

Le débat a surtout porté sur la question de savoir si l'objet de la proposition de Petro-Sun/SNC avait été bien défini. Étant donné que l'entreprise était désignée comme une entreprise de production d'énergie, seules les solutions de rechange productrices d'énergie ont été évaluées. Les intervenants ont soutenu que l'installation projetée était en fait une installation de gestion des déchets et que d'autres systèmes de gestion des déchets auraient donc dû être identifiés et évalués. Le promoteur a soutenu que son domaine était la production d'énergie et que les systèmes de gestion des déchets ne relevaient pas de son mandat; par conséquent, d'autres systèmes de gestion des déchets n'avaient pas besoin d'être examinés comme solutions de rechange raisonnables.

La commission a constaté que les exigences de la *Loi sur les évaluations environnementales* touchant la description et l'objet de l'entreprise devaient être identifiés pour le secteur privé et pour le secteur public, et elle a souligné que l'entreprise devrait être décrite avec précision et en termes que le public peut comprendre. Dans ce cas, l'entreprise avait été bien décrite dans l'évaluation environnementale, mais la définition de son objet ne traitait pas de la fonction de gestion des déchets de l'entreprise. Par conséquent, les solutions de rechange au système de gestion des déchets, telles que la réduction, le recyclage et la mise en décharge, n'avaient pas été identifiées ou évaluées.

La commission mixte a déclaré ce qui suit : « L'identification de solutions de rechange à l'entreprise doit être déterminée selon l'objet des fonctions de l'entreprise, et non selon l'objet des buts commerciaux du promoteur privé. » La commission a conclu que la *Loi sur les évaluations environnementales* doit s'appliquer de façon uniforme aux promoteurs du secteur privé et à ceux du secteur public. Les promoteurs du secteur privé doivent identifier des solutions de rechange raisonnables à l'entreprise proposée dans le cadre du processus de planification.

L'évaluation des solutions peut, de façon tout

à fait appropriée et par nécessité, être effectuée dans le contexte du bien-être économique et du mandat commercial du promoteur. Cependant, les incidences éventuelles de l'entreprise sur l'environnement et des solutions de rechange raisonnables devaient également être examinées aussi rigoureusement pour les propositions du secteur privé que pour les propositions du secteur public.

En dernière analyse, la commission a décrété que l'évaluation environnementale soumise au ministre n'était pas adéquate parce que les solutions de rechange au système de gestion des déchets n'avaient pas été identifiées ou évaluées.

Cependant, beaucoup des preuves concernant les solutions de rechange ont été présentées à la commission pendant l'audience par des témoins de la région de Peel et du ministère de l'Environnement. Les premiers ont présenté des données tirées du plan directeur de gestion des déchets de la région qui, à cette époque, en était à la dernière étape de rédaction. Ces données portaient sur la quantité de déchets produite dans la région, les méthodes proposées pour gérer ces déchets et les buts et les étapes de ses programmes de réduction et de recyclage. Les témoins du ministère ont parlé de l'expérience de la province en matière de réduction et de recyclage des déchets.

La commission s'est dite d'avis qu'une évaluation environnementale doit répondre à l'objet de la *Loi sur les évaluations environnementales* et fournir suffisamment de preuves pour lui permettre de fonder sa décision. Dans l'affaire Petro-Sun/SNC, elle a constaté que l'évaluation était acceptable. Celle-ci comprenait non seulement l'évaluation environnementale présentée au ministre mais également toutes les preuves admises par la commission à l'audience. À la fin des travaux, les preuves soumisees à la commission étaient suffisantes pour lui permettre de prendre une décision et de répondre aux exigences de la loi.

La commission mixte a autorisé la compagnie Petro-Sun/SNC à aller de l'avant avec son installation, assortissant son

Demande de décharge de Halton

La première demande de décharge présentée en vertu de la Loi sur les évaluations environnementales est celle qui a été soumise par la municipalité régionale de Halton et qui a été entendue par une commission mixte. Elle visait l'aménagement d'une décharge sur une période de vingt ans afin de répondre aux besoins de toute la région.

Il va sans dire que l'audience a été complexe, les preuves présentées allant de l'évaluation des incidences sociales à l'hydrogéochimie des lieux. L'audience a également été prolongée par le fait que le promoteur avait identifié deux lieux manifestement différents dans deux municipalités différentes (Burlington et Milton) comme étant presque également acceptables.

La Commission a constaté que l'un des lieux proposés ne se prêtait pas à l'aménagement d'une décharge pour un certain nombre de raisons, dont l'une des plus importantes était le déplacement prévu de produits de lixiviation et l'incertitude qui existait à propos du devenir des polluants contenus dans ces produits.

Même s'il a fallu examiner les preuves relatives aux répercussions éventuelles du projet sur le plan culturel, notamment pour ce qui concerne l'archéologie, le patrimoine et les usages communautaires dans les régions à l'étude, la Commission a observé que ces questions n'avaient aucun rapport avec la question principale.

Les effets de la proposition sur l'environnement physique et social étaient beaucoup plus importants. Même si la Commission avait constaté que les incidences sociales n'avaient pas été bien évaluées, il y avait suffisamment de preuves pour étayer la conclusion selon laquelle le projet aurait de sérieuses répercussions, mais différemment distribuées, dans les deux régions; dans la région rurale située près de la ville de Milton, les répercussions seraient très élevées pour un petit nombre de personnes, tandis que le lieu proposé à Burlington aurait



de moins grandes répercussions sur un plus grand nombre de personnes.

La majeure partie des preuves portaient sur l'a-propos des deux lieux sur le plan hydrogéologique. En termes simples, elles traitaient de la question de savoir si la terre sous les deux lieux proposés était une terre appropriée pour une décharge. Le lieu situé à Milton est basé sur du till argileux, tandis qu'à Burlington, la décharge devait être établie sur une carrière de shale fracturée. Après de nombreux mois de témoignages, la Commission a constaté que les points suivants avaient une importance considérable dans la décision à prendre :

« 1. La Commission doit pouvoir comprendre l'hydrogéologie de la région. 2. La perte de polluants doit être minimale (et de préférence nulle) par suite d'un confinement naturel ou d'un confinement aménagé. 3. Le confinement et l'atténuation naturels des polluants sont préférables au confinement et à l'atténuation aménagés. 4. Si on prévoit que des polluants peuvent s'échapper d'une décharge, leur déplacement devrait être prévisible. 5. Il doit être démontré que le déplacement prévu de produits de lixiviation de la décharge n'aura aucun effet négatif sur les eaux de surface. 6. Le contrôle du déplacement et du mouvement des polluants devrait être simple. 7. On doit être en mesure d'avoir le plus de confiance possible dans l'efficacité des mesures d'urgence visant à intercepter et à capturer les polluants perdus. »

(pp. 109-112 du texte anglais de la décision)

Compte tenu de ces questions et d'autres questions, la Commission a constaté que le lieu situé à Burlington ne se prêtait pas à l'aménagement d'une décharge sur le plan hydrogéologique, tandis que celui de Milton s'y prêtait.

Etant donné qu'il s'agissait de la première demande de décharge municipale examinée complètement en vertu de la Loi sur les

les vues du membre de la Commission et d'encourager les parties à abandonner les positions qui semblent faibles ou difficiles à soutenir. La Commission se dirige vers cette approche avec prudence, reconnaissant que son mandat n'est pas simplement de régler les conflits entre les parties, mais d'établir un équilibre entre les intérêts de tous les participants, tout en tenant compte de son objectif qui est d'assurer la protection, la conservation et la gestion prudente de l'environnement.

Avantage des groupes de témoins

Les membres d'un groupe de témoins sont habituellement des experts dans leur domaine qui sont réunis pour fournir une preuve globale. Un témoin individuel peut ne pas être en mesure de répondre totalement à une question sur un sujet qui découle de son témoignage. Il se peut que la réponse ne soit donnée que plus tard au cours de l'audience, ce qui fait que la Commission et les parties ne disposent pas de tous les éléments leur permettant de comprendre la question. C'est à ce besoin de simplification et de cohérence que le groupe de témoins a pour but de répondre.

La convocation de groupes de témoins est laissée à la discrétion des avocats, qui doivent déterminer si cette forme de présentation est appropriée. Les circonstances qui justifient une telle mesure sont les suivantes : le chevauchement des sujets; l'enchaînement de deux témoignages; la volonté de combler les lacunes dans le témoignage d'un témoin par des preuves supplémentaires présentées par un autre témoin.

Voici un exemple qui illustre l'efficacité de cette formule. Au cours d'une audience touchant une décharge, la stratigraphie des lieux et les caractéristiques chimiques des eaux souterraines sont des questions centrales. Les preuves nécessaires sont obtenues par des forages à divers endroits. Des échantillons sont ensuite envoyés à un laboratoire pour fins d'analyse. Un des témoins peut être chargé de superviser le programme de forage, l'envoi des échantillons au laboratoire et l'établissement

de tableaux au moyen des renseignements fournis par le laboratoire. Le deuxième témoin serait alors appelé à interpréter les résultats des tableaux. Les deux témoins sont nécessaires pour fournir une image globale du programme de forage et son interprétation. Par exemple, en cas de lecture inhabituelle ou incorrecte dans les tableaux, la Commission voudra peut-être déterminer si l'erreur provient d'un mauvais échantillonnage ou d'une mauvaise technique de laboratoire, ou si la lecture est valable et peut être expliquée. Dans un tel cas, les deux témoins sont nécessaires pour fournir les renseignements voulus au sujet de la lecture.

Aucune formule ne permet de déterminer le nombre de témoins dans un groupe. Dans le cas de l'audience sur la gestion du bois d'œuvre, certains groupes en compaient deux tandis que d'autres en compaient neuf, selon le sujet traité et le degré de chevauchement des preuves. Pendant l'interrogatoire principal et le contre-interrogatoire, les avocats posent généralement leurs questions au témoin le plus qualifié pour répondre. En contre-interrogatoire, cependant, la même question peut être posée à plus d'un témoin et, dans ces circonstances, des réponses différentes, voire contradictoires, peuvent en résulter. Il arrive parfois qu'un témoin refuse de répondre, laissant ce soin à un collègue mieux qualifié. Quelquefois, les avocats des témoins s'opposent à ce que la même question soit posée à plus d'un témoin. Dans ce cas, c'est à la Commission qu'il revient de décider si un ou plusieurs témoins doivent répondre à la question. Les critères qu'utilise alors la Commission comprennent le degré de chevauchement dans les domaines d'expertise, le genre de preuve fournie en interrogatoire direct et la question de savoir si le témoin est qualifié pour répondre. Les groupes de témoins sont utilisés dans deux situations nouvelles. Premièrement, un groupe général réunissant la totalité ou la quasi-totalité des experts engagés dans une

audience, rassemblés pour répondre aux questions du public. Les membres du public qui sont incapables d'assister chaque jour à l'audience peuvent, à l'occasion de séances spéciales à leur intention, demander aux experts de répondre à leurs préoccupations et à leurs questions particulières. Cette formule, ainsi que la présentation individuelle de preuves, leur permet de participer directement au processus d'audience. Deuxièmement, l'utilisation de groupes de témoins peut se faire à la conclusion d'une longue audience. Au moment de présenter sa contre-preuve, le promoteur voudra peut-être soulever un certain nombre de points abordés lors de témoignages précédents. Plutôt que d'examiner ces questions en interrogeant chacun des témoins, l'avocat peut les regrouper pour qu'ils répondent à une série de questions. Ce genre de groupe complète la présentation du promoteur et comble les lacunes de la preuve.

Les groupes de témoins sont des instruments polyvalents du processus d'audience. Leur utilisation a contribué à accélérer le processus et à le rendre plus impartial en garantissant une meilleure compréhension des preuves aux premières étapes de l'audience.

pour pouvoir fournir l'information nécessaire. C'est également à cette étape que seront abordés les délais impartis pour le dépôt des documents, l'utilité d'avoir recours à des unités de mesure uniformes, les limites raisonnables à prévoir pour la présentation des preuves orales, les avertissements au sujet des parties convenant qu'une question n'est pas en litige, seuls les preuves strictement nécessaires pour établir les faits aux yeux de la commission mixte seront présentées et il ne faudra pas tenir de contre-interrogatoire à ce sujet. Au moment de déterminer à qui elle adjugera les coûts, la commission mixte pourra tenir compte, entre autres choses, du fait que la partie en cause a refusé de convenir qu'une question n'était pas en litige lorsqu'elle aurait dû en convenir, et du fait que le comportement de cette partie a permis d'abréger ou a prolongé indûment l'audience.

préparer et axer davantage leur cause sur les questions importantes.

Des règles supplémentaires ont été conçues pour accélérer l'audience. Les parties et leurs experts doivent se rencontrer avant le début pour tenter de convenir d'une déclaration de faits et d'opinions d'experts. Si les parties conviennent qu'une question n'est pas en litige, seuls les preuves strictement nécessaires pour établir les faits aux yeux de la commission mixte seront présentées et il ne faudra pas tenir de contre-interrogatoire à ce sujet. Au moment de déterminer à qui elle adjugera les coûts, la commission mixte pourra tenir compte, entre autres choses, du fait que la partie en cause a refusé de convenir qu'une question n'était pas en litige lorsqu'elle aurait dû en convenir, et du fait que le comportement de cette partie a permis d'abréger ou a prolongé indûment l'audience.

L'expérience d'autres comités

Les membres de la Commission des évaluations environnementales et de commissions mixtes ont proposé et mis à l'essai des règles améliorées pour simplifier le processus de chaque audience importante qui a eu lieu l'an dernier. Plus l'audience est longue et complexe, plus ces changements sont nécessaires.

Les comités des audiences portant sur l'incinérateur Trintek et la décharge de Peel ont élaboré de telles règles, mais ont été incapables de les mettre en application parce que les audiences ont été ajoutées. D'autres audiences, y compris celles touchant les décharges de North Simcoe et de Meaford ainsi que le chemin Derry, utilisent les nouvelles approches.

Bon nombre des règles qui ont été mises

Rôle des réunions et audiences préliminaires

La discussion qui précède permet de constater l'importance d'une audience ou réunion préliminaire : c'est la tribune qui a permis à la Société ontarienne de gestion des déchets et à d'autres comités de préciser l'orientation qu'ils compaient prendre. Il est devenu courant que les audiences préliminaires fassent intervenir l'examen détaillé des positions de chaque partie, l'établissement des questions qui seront examinées pendant l'audience et le calendrier d'échange des déclarations et des interrogatoires écrits des témoins. Ce calendrier décrit ce que diront les divers témoins et permet aux autres parties de poser à l'avance, des questions qui nécessitent des renvois ou des calculs détaillés avant de

en oeuvre après discussion et accord lors d'audiences préliminaires et qui sont utilisées dans des audiences en cours sont semblables à celles déjà en place pour les audiences sur la gestion du bois d'oeuvre et la Société ontarienne de gestion des déchets. Ces règles comprennent notamment le dépôt préliminaire des déclarations des témoins, la nécessité d'un préavis si une partie prévoit de contester la qualification d'un témoin expert, l'obligation pour les parties de déposer une déclaration précisant les faits, les questions ou les preuves sur lesquels elles se sont entendues; la présentation préalable de l'ordre des témoins et de la liste d'experts, ainsi que le temps prévu pour l'interrogatoire principal; et la nécessité de limiter le contre-interrogatoire des témoins par les parties ayant des intérêts semblables aux questions de clarification, sans répétition de l'interrogatoire principal.

Les parties aux audiences de la Commission ont appuyé l'idée de simplifier le processus parce qu'elles trouvent les audiences longues et trop coûteuses. Bien que certaines se soient opposées à quelques-unes des propositions, elles ont pu en arriver à un consensus et ont convenu d'accepter la majorité des propositions de la Commission.

des déclarations des témoins, des interrogatoires écrits et des réponses, mais avant la présentation de la preuve orale, afin de délimiter les principales questions ou divergences sur lesquelles on insistera à l'audience. Toute entente conclue par ces experts serait entérinée par les parties et présentée à la Commission sous forme de déclaration de faits acceptés ou de témoignage oral d'un témoin ou d'un groupe de témoins, qui pourrait même comprendre des experts de plus d'une partie.

La Commission va se pencher sur les moyens d'adopter la notion de conférence préparatoire à l'audience qui est utilisée par les tribunaux judiciaires. Il s'agit de tenir une réunion, juste avant le début des témoignages oraux, entre les parties et un membre de la Commission qui ne siègerait pas à cette audience, dans le but d'expliquer

quatorzième groupe de témoins, plus de 600 pièces avaient été déposées et environ 20 000 pages de preuves avaient été transcrites. La Commission a apporté de nombreux changements à sa procédure en vue d'accélérer les audiences tout en reconnaissant la complexité de la cause et l'exigence juridique voulant que tous les participants aient droit à un traitement juste. Parmi ces changements, des mesures évidentes ont été prises, comme admettre les compétences de témoins experts sur la foi de leur curriculum vitae, plutôt que des déclarations de faits ont également été prévues dans le cas des preuves non litigieuses, éliminant encore une fois la nécessité d'une

présentation orale de preuves et d'un contre-interrogatoire. La Commission a pensé à imposer une limite de temps pour la présentation orale de la preuve principale, mais elle s'en est abstenue pour éviter de porter préjudice aux parties suivant le promoteur. Cependant, elle a fortement suggéré aux parties de réduire volontairement le temps qu'elles mettraient à donner des preuves orales directes, qui pour la plupart contiennent les mêmes renseignements que dans les déclarations écrites.

La Commission a instauré des modifications visant à contre l'antagonisme qui caractérise habituellement les audiences. La Commission croit que « l'élément de surprise » n'est pas nécessairement productif dans une séance publique où l'aventir de l'environnement est en jeu. Le promoteur doit soumettre un sommaire des questions importantes abordées dans les déclarations de ses témoins, et les autres parties doivent imposer une limite de temps pour la présentation orale de la preuve principale, mais elle s'en est abstenue pour éviter de porter préjudice aux parties suivant le promoteur. Cependant, elle a fortement suggéré aux parties de réduire volontairement le temps qu'elles mettraient à donner des preuves orales directes, qui pour la plupart contiennent les mêmes renseignements que dans les déclarations écrites.

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La Société ontarienne de gestion des déchets : le prochain défi

Par suite de réunions préliminaires à l'audience portant sur la Société ontarienne de gestion des déchets, la commission mixte a publié un certain nombre de directives. Elle a décidé de mener l'audience par étapes, organisées à l'avance, de sorte que la présentation des preuves et l'examen de sujets particuliers par toutes les parties soient terminés avant de passer à l'étape suivante. Le promoteur a été tenu de soumettre toutes les déclarations de ses témoins et les rapports sur lesquels il entend se fonder, avant même le début de l'audience, les autres parties devant présenter les déclarations de leurs témoins et les rapports avant le début de chaque étape. En divulguant avant l'audience les documents écrits qui y seront examinés, les parties pourront mieux se

bien avant la fin de l'audience favorise la fait de faire connaître les objectifs des parties d'application. La Commission croit que le compris une ébauche des modalités entendaient demander à la Commission, y bref résumé écrit des décisions qu'elles toutes les parties pour la présentation d'un Enfn, des délais serrés ont été imposés à réellemment en litige.

Les questions importantes qui sont ont pour objet de tenter d'axer l'audience sur de chaque groupe de témoins. Ces séances Commission avant le début des témoignages officielles « d'observation » dirigées par la parties sont ensuite utilisées dans des séances d'explications du promoteur et des autres nécessaires ou ne nécessitent pas contre-interrogatoire, puis celles qui sur lesquelles elles prévoient de faire un lesquelles elles se déclarent d'accord, celles questions soulevées par le promoteur avec soumettre à leur tour des déclarations sur les

simplification du processus et, partant, en accélère la conclusion.



dépens en conséquence. Ainsi, les parties aux futures audiences pourront aider à simplifier elles-mêmes le processus.

Gestion du bois d'œuvre : la première audience sur une évaluation environnementale de portée générale

L'enjeu, ici, est l'avenir de l'industrie forestière de l'Ontario. Des pratiques de foresterie et des règlements

gouvernementaux qui soient respectueux de l'environnement sont indispensables pour fournir un approvisionnement suffisant en bois. Bien que ces questions aient une

importance sur les plans économique et social pour l'ensemble de la province, elles préoccupent particulièrement les localités du Nord qui dépendent en grande partie ou en

totalité de cette industrie pour leur survie. L'intérêt que suscite la protection de nos forêts se traduit par le fait que plus de 50

groupes sont représentés à titre de parties aux audiences. Ces dernières ont surtout lieu à Thunder Bay, et des audiences publiques

supplémentaires sont prévues dans 14 autres villes, situées principalement dans le Nord. Les

transcriptions sont conservées dans des dizaines de municipalités de la province, de sorte que toutes les parties

désireuses de prendre part aux audiences seront en mesure de le faire.

Le ministère des Richesses naturelles a préparé sa cause pendant des années. Compte tenu de l'importance et de la

diversité des questions à l'étude, il n'est peut-être pas surprenant de constater que

les preuves sont présentées dans le cadre d'un long processus qui fait intervenir 17 groupes

comptant jusqu'à neuf témoins. Lorsque la Commission a suspendu ses travaux en

juillet, le promoteur en était rendu au

4. Des changements fondamentaux

apportés par le promoteur aux critères de sélection pendant le processus (par

exemple, faire du confinement naturel un facteur décisif) ne peuvent être justifiés

que si tous les lieux à l'étude à ce moment sont assujettis aux nouveaux critères.

5. Les fonctionnaires du ministère de l'Environnement chargés de l'examen officiel des documents d'évaluation

environnementale peuvent jouer un rôle plus important dans le processus en

maintenant les choses dans la bonne direction et en comblant les lacunes de la

demande avant que l'examen ne soit terminé et envoyé à la Commission pour

finis d'audience. 6. Les avocats doivent se souvenir que le

principal objectif d'une audience consiste à informer la Commission pour l'aider à

prendre une décision éclairée, et non à défendre les intérêts de parties.

7. Les consultations publiques ne doivent pas être simplement une séance où le

promoteur parle aux personnes touchées, mais plutôt un lieu d'échange où l'on tient

compte des préoccupations des citoyens, même si des mesures ne sont pas prises

pour les régler. 8. Les présentations doivent être

améliorées : les rapports ne doivent pas être retenus de façon déraisonnable

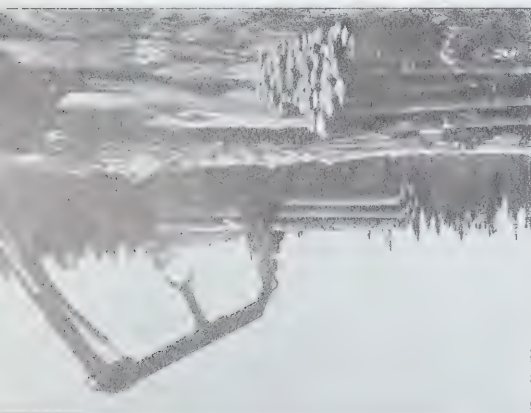
• les preuves non pertinentes doivent être évitées

• les détails excessifs de même

• les experts ne doivent pas être des défenseurs de leurs clients

• l'approche adoptée par le promoteur doit être impartiale et juste.

En outre, la commission mixte a fait savoir aux parties à l'audience sur la décharge de Halton que certaines des pratiques observées étaient inacceptables, et elle a adjugé les



décharge de Halton sont examinés dans l'étude de causes particulières, plus loin dans le présent rapport. On dit que cette audience avait été excessivement longue et compliquée. Il est certes intéressant de constater qu'elle a duré 194 jours, que plus de 1 000 pièces y ont été déposées et qu'elle a généré 50 000 pages de transcription.

Une audience trop longue ou complexe laisse, dans son sillage, le sentiment que la justice n'a pas été bien servie. La façon dont l'évaluation de Halton a été traitée, et les répercussions ultérieures pour l'audience, ont justifié à ce sentiment. Par ricochet, le comité est parvenu à certaines conclusions sur les moyens de simplifier le processus, pour que les futures audiences soient plus efficaces.

Voici quelques points qui pourraient bien être améliorés :

1. Quand le promoteur applique son jugement aux facteurs d'évaluation, afin de passer d'une étape du processus d'évaluation à une autre, il doit être possible d'associer ce jugement aux données disponibles à ce moment.
2. L'application uniforme des critères de sélection des lieux par le promoteur aiderait à cerner les lieux vraiment comparables, plutôt que de perdre du temps à étudier des lieux de toute évidence différents, qui ne peuvent être comparés que si des hypothèses fondamentalement divergentes sont faites.
3. La Commission ne devrait pas avoir à faire un choix final entre deux lieux d'élimination, puisque cela ne fait que mobiliser les parties intéressées autour de chacun, chaque partie luttant non seulement contre le promoteur, mais l'une contre l'autre, pour faire en sorte que la Commission choisisse le lieu de l'autre partie. Ce genre d'audience prend beaucoup plus de temps que celles où un seul lieu est étudié.

L'absolue nécessité. Le processus lui-même doit être le plus efficace possible. Nous avons la responsabilité de veiller à ce que les derniers publics soient bien dépensés dans la poursuite de notre objectif qui consiste à sauvegarder l'environnement.

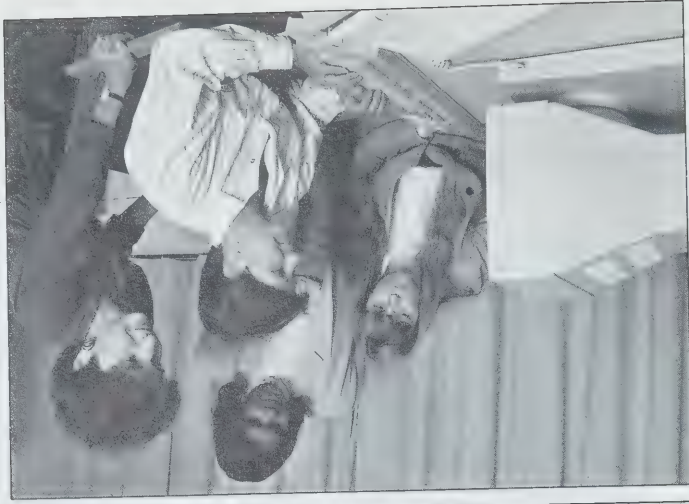
La simplification du processus ne compromet en rien notre obligation de garantir à tous les participants une audience juste. De façon générale, les parties aux audiences sont d'accord avec cette simplification. La plupart des règles de procédure que nous avons adoptées visent à obtenir les preuves aussi rapidement que possible, sans nuire à personne.

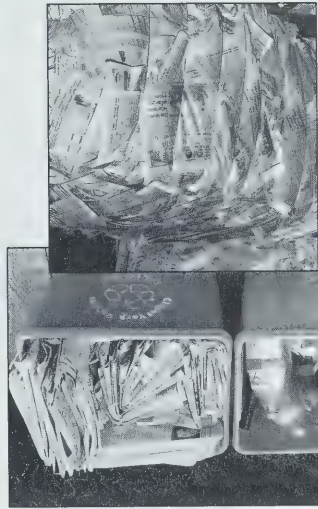
La décharge de Halton : une cause qui nécessitait des changements

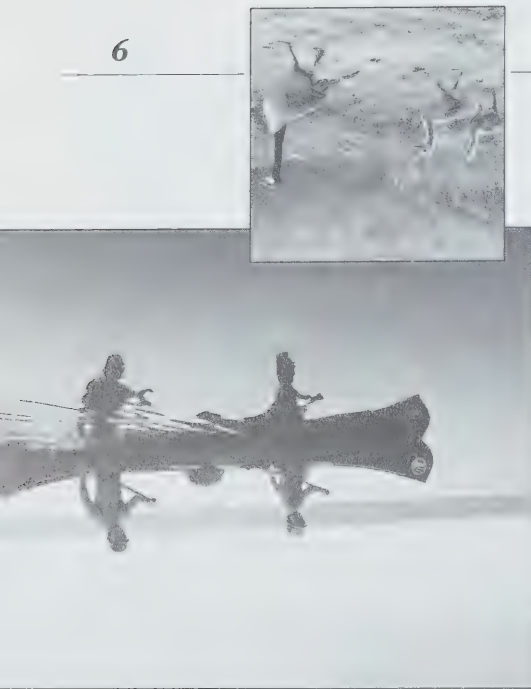
Les principaux aspects de la demande de

au cours de la dernière année, nous avons déclaré à maintes reprises que la Commission des évaluations environnementales était déterminée à améliorer la façon dont elle dirige ses audiences. Son travail vise de plus en plus des projets coûteux qui s'étendent sur plusieurs années, comme le plan du ministère des Richesses naturelles de l'Ontario, qui souhaite mettre sur pied un programme de gestion du bois d'œuvre sur les terres de la Couronne, et la proposition d'installations de traitement et d'élimination des déchets dangereux dans le canton de Lincoln-Ouest présentée par la Société ontarienne de gestion des déchets. Les audiences de la Commission sont en grande partie financées par les deniers publics; nous croyons donc que les longues audiences ne sont justifiées qu'en cas









L'agent d'audience de l'escarpement du Niagara, tiendraient normalement une audience en vertu d'une loi qui justifient l'application de la Loi sur la jonction des audiences.

Les commissions mixtes ont le pouvoir d'adjuger les dépens et l'ont grandement exercé récemment, notamment dans le cas de la demande d'aménagement d'un incinérateur présentée par SNC et de la proposition de décharge de Halton. Ces dépens ont été adjugés en fonction de la contribution de la partie à l'audience, et non du fait que les résultats de l'audience traduisaient la position de la partie contre qui les dépens ont été adjugés. Dans le cas de la décharge de Halton, les dépens ont été adjugés contre les parties qui, de l'avis de la Commission, avaient indûment allongé l'audience par la présentation de renseignements non pertinents. Les dispositions d'appel de la Loi sur la jonction des audiences ont préséance sur celles de chacune des lois qu'elle vise. La décision d'une commission mixte est irrévocable 28 jours après qu'elle a été rendue, à moins qu'un appel n'ait été interjeté devant le Conseil des ministres.

les dépens de la même façon qu'elle le fait en vertu de la Loi sur la protection de l'environnement, et les droits d'appel sont identiques à ceux prévus dans cette loi.

Loi sur les enquêtes publiques

À l'occasion, par voie de décret, la Commission doit tenir des audiences en vertu de la Loi sur les enquêtes publiques. Cette loi permet d'entendre les témoins des intérêts sur les questions d'intérêt public non visées par une autre loi.

Le Conseil des ministres peut nommer une commission d'enquête sur toute question susceptible d'influer sur le bon fonctionnement de l'Ontario, la gestion des affaires publiques ou l'administration de la justice. S'il s'agit d'une question d'ordre environnemental, il se peut que ce soit la Commission qui soit appelée à diriger l'audience.

Loi sur la jonction des audiences

La Loi sur la jonction des audiences fournit une procédure générale qui englobe 12 lois précises, dont la Loi sur les évaluations environnementales, la Loi sur la protection de l'environnement, la Loi sur l'expropriation (la Commission n'est visée que par les articles 6, 7 et 8), la Loi sur les municipalités, la Loi sur la planification et l'aménagement de l'escarpement du Niagara, la Loi sur les ressources en eau de l'Ontario et la Loi sur l'aménagement du territoire. La Commission des évaluations environnementales s'occupe normalement des demandes assujetties à beaucoup de ces lois et elle a été désignée, tout comme la Commission des affaires municipales de l'Ontario, comme l'un des organismes d'où proviennent les membres de commissions mixtes prévues par cette loi. Les présidents des deux commissions décident si une commission mixte pour une audience particulière sera composée de membres de chaque commission ou bien d'un ou de plusieurs membres d'une seule de ces commissions. Quoi qu'il en soit, les membres des commissions mixtes ne proviennent d'aucune autre source, même si certains autres organismes ou particuliers, tels que

contrôle ou la tenue de consultations publiques supplémentaires. Depuis l'adoption de ces modifications, la Commission demande au directeur des Autorisations d'imposer des conditions précises et de lui faire connaître les motifs de ces conditions au moyen de la formule prescrite à cet effet. Apparaissant, la Commission recommandait au directeur d'imposer ces conditions. En vertu de la nouvelle pratique, les parties intéressées doivent recommander et discuter, à l'audience, toutes les conditions qu'elles jugent nécessaires, puisqu'elles n'auront aucune autre occasion de les réviser ou d'y ajouter des détails, à moins d'en appeler devant le Conseil des ministres.

Loi sur les ressources en eau de l'Ontario

En vertu des paragraphes 25 (1) et 26 (1) de la Loi sur les ressources en eau de l'Ontario, la Commission est habilitée à tenir une audience après en avoir reçu l'avis du directeur. Ces paragraphes traitent de l'établissement ou de l'agrandissement d'une station d'épuration des eaux d'égout dans une municipalité autre que celle du requérant, ou de la construction d'une station dans la municipalité de ce dernier. Dans le premier cas, une audience est obligatoire; dans le second, c'est le directeur qui décide s'il faut ou non en tenir une. Après que le directeur le a avisé la Commission, celle-ci doit aviser le public de l'audience en lui signalant que si elle ne reçoit aucune objection à la demande, la décision la concernant sera prise sans audience. En vertu de la Loi sur les ressources en eau de l'Ontario, la Commission est également habilitée à tenir des audiences au sujet des demandes qu'elle reçoit en vue de définir et de désigner une zone en tant que zone de service public d'eau ou zone de service public d'égout, et à fixer les tarifs relatifs à ces services. La Commission n'est pas tenue de convoquer une audience si personne ne s'oppose à une proposition une fois l'avis au public donné.

La Commission peut maintenant adjuger

écrasante. S'il y a lieu, on peut toujours faire changer de catégorie un projet visé par une évaluation de portée générale et demander qu'il soit étudié séparément.

Une vaste gamme de projets se prêtent à une évaluation de portée générale. Les projets provinciaux et municipaux de construction routière ont été parmi les premiers à être évalués de cette façon; depuis, on l'a fait pour un certain nombre d'autres demandes qui visaient par exemple des installations d'élimination des déchets solides, des barrages, des digues et des circuits de canotage. La Commission mène actuellement une audience sur l'évaluation environnementale de portée générale relative à la gestion du bois d'oeuvre sur les terres de la Couronne de l'Ontario. Il s'agit de la première évaluation d'aussi grande envergure à être classée dans les évaluations de portée générale et elle établira sans doute des précédents pour des évaluations semblables dans l'avenir.

La Commission a le pouvoir de déterminer ses propres règles de procédure en vertu de la loi et, en janvier 1988, elle a adopté son premier règlement intérieur. Depuis le 1^{er} avril 1989, elle a également le pouvoir d'adjudger les dépens aux parties à une audience sur une évaluation environnementale. La Commission n'est cependant pas assujettie aux conditions qui régissent

l'adjudication des dépens par les tribunaux. Cette disposition constitue un instrument important, dont l'utilisation peut inciter les participants à présenter leur cause avec rapidité et de manière responsable.

Loi sur la protection de l'environnement

En vertu des articles 30 et 32, Partie V, de la *Loi sur la protection de l'environnement*, la Commission est autorisée à tenir des audiences sur les systèmes de gestion des déchets et les lieux d'élimination des déchets. Les décisions qui résultent de ces audiences sont prises sur la base de l'objet de la loi, à savoir « la protection et la conservation de l'environnement naturel ».

Jusqu'en juin 1988, la Commission pouvait faire des recommandations, mais elle ne pouvait pas rendre de décision. Conformément à la *Loi de 1988 modifiant des lois concernant l'exécution de mesures environnementales*, L.O. 1988, chap. 54, elle est maintenant habilitée à prendre des décisions et à adjudger les dépens aux termes de la *Loi sur la protection de l'environnement*. Les pouvoirs d'adjudication des dépens ont été abrogés par la *Loi de 1988 sur le projet d'aide financière aux intervenants*, L.O. 1988, chap. 71, qui a remplacé ces pouvoirs par des pouvoirs semblables, mais plus étendus, qui



permettent à la Commission d'utiliser des critères plus larges que ceux dont se servent les tribunaux. Ces dispositions visent à donner à la Commission la capacité d'adjudger les dépens aux parties « perdantes » si elles ont contribué de façon importante à l'audience.

Il est maintenant possible d'en appeler des décisions de la Commission devant le Conseil des ministres de l'Ontario ou, pour une question de droit, devant la Cour divisionnaire de l'Ontario. Cette disposition signifie que la Commission d'appel de la structure d'appel des décisions de la Commission des évaluations environnementales. Elle continue cependant de participer à l'examen des décisions prises sans audience par un directeur nommé aux termes de la *Loi sur la protection de l'environnement*.

Les dispositions de la loi portant sur la tenue d'une audience demeurent inchangées. Lorsqu'une demande fait intervenir l'élimination de déchets industriels liquides transportés ou de déchets dangereux, ou encore la production de déchets domestiques pour l'équivalent de 1 500 personnes, une audience publique est obligatoire; cependant, le directeur peut dispenser la Commission d'en tenir une s'il est d'avis que la situation est urgente. Dans d'autres situations, le directeur peut, sans y être obligé, exiger la tenue d'une audience. Les critères que la Commission emploie pour déterminer si une demande doit être approuvée sont contenus à l'article 38 de la *Loi sur la protection de l'environnement*. En gros, cet article dispose qu'une demande peut être refusée ou que des conditions peuvent y être imposées dans les cas suivants :

- l'entreprisse proposée n'est pas conforme à la loi ou à ses règlements;
- elle peut créer une nuisance;
- elle n'est pas dans l'intérêt public;
- elle peut engendrer un risque pour la santé ou la sécurité de quiconque.

Les conditions peuvent comprendre, par exemple, une étude des besoins techniques, des garanties financières, un programme de

Compétence

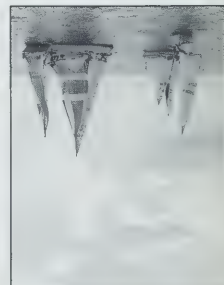
Loi sur les évaluations environnementales

La Loi sur les évaluations environnementales est le texte législatif qui établit les conditions de planification que doivent remplir les promoteurs d'entreprises et qui donne à la Commission un contrôle général sur la planification d'une entreprise et sur ses aspects physiques et techniques. Dans la loi, l'environnement désigne non seulement l'environnement naturel, mais également les « conditions sociales, économiques et culturelles » et tout « bâtiment, ouvrage, machine ou autre dispositif ou chose fabriquée

par l'être humain ». Cette loi a pour objet « la protection, la conservation et la gestion prudente de l'environnement en Ontario ». La Commission a le pouvoir d'autoriser ou de rejeter des entreprises sur renvoi du ministre de l'Environnement. La loi vise les entreprises du gouvernement provincial et des municipalités, mais non celles du secteur privé, sauf si elles sont désignées expressément par le ministre. À l'heure actuelle, les entreprises du secteur privé qui portent sur la gestion des déchets, y compris les incinérateurs, y sont assujetties. Si une entreprise proposée relève de la Loi sur les évaluations environnementales, le promoteur doit présenter une évaluation environnementale. Il s'agit d'un document décrivant en détail le projet, ses répercussions et toute mesure atténuante susceptible d'en découler. L'évaluation doit en outre proposer des solutions de rechange à l'entreprise et d'autres méthodes possibles pour la réaliser, et faire état des répercussions éventuelles. Par ailleurs, la Commission peut demander que des modifications soient apportées à l'évaluation avant de l'approuver.

Une fois l'évaluation achevée, une audience peut avoir lieu si on l'a demandée, à moins que le ministre ne juge qu'une audience serait inutile ou retarderait indûment les choses. Sur autorisation du Conseil des ministres, le ministre peut également accorder une exemption et dispenser ainsi les parties de l'évaluation et de l'audience, s'il estime que l'application normale de la loi ne serait pas dans l'intérêt public.

Outre les propositions individuelles, la loi prévoit des évaluations de portée générale. Ce genre d'évaluation a pour objet de regrouper les projets de moindre envergure qui ont des effets négligeables ou similaires et dont l'examen distinct entraînerait une charge administrative



Aide financière aux intervenants

La Commission des évaluations environnementales a aidé financière aux participants à ses audiences. Présentée de façon bien structurée et responsable, la défense de l'intérêt public nous permet de veiller à ce que tous les sujets de préoccupation soient examinés et à ce qu'un certain équilibre soit établi dans les données qui nous sont soumises. En outre, une aide financière versée bien avant l'audience aide les parties intéressées à planifier une participation plus utile, rend le processus plus efficace et accessible et, d'après notre expérience, abrége la durée de l'audience. Le gouvernement de l'Ontario a entrepris d'importantes initiatives à cet égard. Depuis 1984, des fonds ont été versés à l'avance par décret pour 15 audiences auxquelles a participé la Commission. À une exception près, chaque décret autorisait cette dernière à répartir un montant précis entre les participants éventuels qui remplissaient les critères d'admissibilité prévus dans le décret. Les montants fournis variaient entre 30 000 \$ et 750 000 \$, cas de l'audience relative à la gestion du bois d'oeuvre qui a cours à Thunder Bay.

En ce qui concerne l'audience de la Société ontarienne de gestion des déchets, le décret diffère des autres. Ici, la Commission a été autorisée à faire des recommandations au gouvernement quant au montant total à fournir et aux modifications à apporter aux critères d'admissibilité, puis à distribuer les fonds une fois l'approbation donnée par le gouvernement.

En décembre 1988, le comité de financement a recommandé un programme de financement au ministre de l'Environnement qui consistait à distribuer environ 3,8 millions de dollars sur une période de deux ans à trois intervenants : la municipalité régionale de Niagara, le canton de Lincoln-Ouest et l'Ontario Toxic Waste Research Coalition. Le programme proposé par le comité recommandait que les critères soient

modifiés de manière à ce que les frais juridiques puissent être remboursés aux mêmes taux que ceux utilisés par le gouvernement lorsqu'il engage un avocat du secteur privé. Le décret original exigeait que les taux du régime d'aide juridique s'appliquent.

Le Conseil des ministres de l'Ontario a approuvé le programme proposé, à l'exception de la recommandation touchant les taux des frais juridiques (évalués à 600 000 \$). Par conséquent, le programme de financement fournira 3,2 millions de dollars aux trois parties pour les aider à se préparer à l'audience de la Société ontarienne de gestion des déchets.

Faisons remarquer que celle-ci avait déjà versé une aide financière de 2,4 millions de dollars aux participants éventuels. Le gros de cette aide financière a été accordé aux deux municipalités qui avaient été proposées comme lieu de l'entreprise.

La décision du gouvernement d'adopter l'idée d'une aide financière aux intervenants dans le cas des audiences portant sur les évaluations environnementales a abouti à l'adoption de la Loi de 1988 sur le projet d'aide financière aux intervenants, promulguée le 1^{er} avril 1989. Aux termes de cette loi, qui sera mise à l'essai pendant trois ans, les intervenants éventuels à toute audience de la Commission des évaluations environnementales, de la Commission de l'énergie de l'Ontario ou d'une commission mixte créée en vertu de la Loi sur la jonction des audiences peuvent demander une aide financière du promoteur pour participer plus efficacement à l'audience. Les critères qui régissent cette aide financière sont prescrits dans la loi. Les causes visées doivent toucher une importante partie de la population et faire intervenir l'intérêt public plutôt qu'un intérêt personnel. Le comité de financement qui comprend des membres de la Commission autres que ceux qui entendent l'affaire, doit déterminer si l'intervenant a tenté d'obtenir des fonds d'autres sources,

Rapport annuel de la Commission des évaluations environnementales 1988-1989

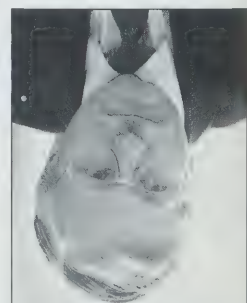
établir s'il s'intéresse véritablement au dossier et examiner sa proposition en ce qui concerne l'utilisation des fonds et le contrôle financier qu'il exercera sur ces fonds. Le promoteur, pour sa part, peut s'opposer au versement d'une aide financière aux termes des critères généraux précités s'il estime que la versement de tels fonds lui causerait des difficultés financières considérables.

La Commission a établi un règlement intérieur en vertu de la loi. Ce règlement traite des avis au public qui doivent précéder le droit des intervenants de demander une aide financière, la marche à suivre pour demander le statut d'intervenant avant la création du comité de financement, le droit qu'a le promoteur de s'opposer au versement d'une aide financière aux intervenants et les renseignements qui doivent figurer dans une demande d'aide financière.

La partie II de la loi modifie les dispositions de la Loi sur les évaluations environnementales et donne à la Commission le pouvoir d'ajuster les dépens à la clôture d'une instance, portant précisément que la Commission des évaluations environnementales, l'Ontario et une commission mixte ne sont pas assujetties aux critères qui régissent l'adjudication des dépens par un tribunal. La loi indique clairement qu'elle ne vise pas les audiences pour lesquelles un avis au public a été donné avant la date de son entrée en vigueur. En conséquence, les pouvoirs d'ajuster les dépens ne s'appliquent pas à l'audience portant sur l'évaluation environnementale de portée générale pour la gestion du bois d'oeuvre.

Douglas James Kingham travaille dans le domaine de la gestion

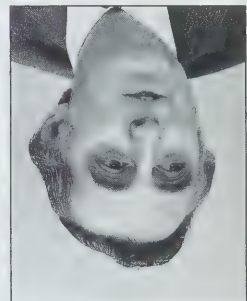
de l'environnement depuis plus de vingt ans, d'abord en qualité de chercheur scientifique et gestionnaire de la qualité des eaux, puis à titre de directeur du programme fédéral d'intervention d'urgence. Il a élaboré le projet de loi sur le déversement dans les océans canadiens et a été négociateur de certaines dispositions du droit de la mer relatives à l'environnement marin, tout en présidant le groupe de travail antipollution de l'Organisation intergouvernementale de la navigation. Avant de se joindre à la Commission, M. Kingham a été directeur général d'Environnement Canada pour la région de l'Ontario et président canadien du Conseil de la qualité de l'eau de la Commission mixte internationale.



Anne Koven est membre à temps partiel et représente Toronto. Nommée à la Commission en avril 1987, Mme Koven détient une maîtrise en administration publique de l'Université Queen's. De 1981 à 1986, elle a été directrice des recherches pour l'étude sur le site d'enfouissement sanitaire du Haut-Ottawa commandée par le ministère de la Santé de l'Ontario. Elle a travaillé dans l'industrie minière et auprès du Conseil consultatif sur la santé et la sécurité au travail de l'Ontario.



Elie W. Martel est vice-président à temps plein de la Commission et représente Capreol. M. Martel était enseignant et directeur d'école avant 1967, année où il a été élu à l'Assemblée législative. M. Martel a été député néo-démocrate de Sudbury-Est jusqu'en 1987 et a été leader parlementaire de son parti de 1978 à octobre 1985. À titre de député, il a accordé considérablement d'importance aux questions environnementales. M. Martel est l'auteur de deux rapports importants sur la sécurité au travail. Il a été nommé à la Commission en mars 1988.



Mary G. Munro est vice-présidente à temps plein de la Commission et représente Burlington. Elle est infirmière diplômée, joue un rôle actif dans les questions communautaires et environnementales depuis de nombreuses années et a siégé à divers conseils et commissions. Mme Munro a été conseillère municipale, conseillère régionale et maire de la ville de Burlington. Elle a été nommée à la Commission le 1er septembre 1981.



Grace Patterson est vice-présidente à temps plein de la Commission. Avant sa nomination en 1986, elle exerçait le droit de l'environnement auprès de l'Association canadienne du droit de l'environnement. Elle a été administratrice de plusieurs organismes de défense de l'environnement et a siégé au Conseil consultatif scientifique de la Commission mixte internationale et au Conseil canadien de la recherche sur les évaluations environnementales. Mme Patterson donne un cours sur le droit de l'environnement à l'école de droit de l'Université Queen's.



Richard A. Pharand, c.r., est membre à temps partiel et représente Sudbury. M. Pharand est bilingue et est l'associé principal de l'étude Pharand Kuyek. Il est l'un des membres fondateurs de l'Association des juristes d'expression française de l'Ontario. M. Pharand est membre de l'Advocates' Society, de la Criminal Lawyers Association, de l'Association du barreau canadien et de la Sudbury Law Association. Il est directeur de secteur de l'aide juridique des districts de Sudbury et Manitoulin. M. Pharand a été nommé à la Commission des évaluations environnementales le 14 avril 1986.



Alan William Roy est membre à temps partiel et représente Brighton. Diplômé en sciences de l'Université Sir George Williams de Montréal et de l'Université Queen's de Kingston, M. Roy a une vaste expérience scientifique dans le domaine de la protection des pêches. Il est actuellement directeur environnemental pour l'Union of Ontario Indians et a été nommé à la Commission en avril 1987.



Elaine B. Tracey est membre à temps partiel et représente Eganville. Mme Tracey a été nommée à la Commission le 29 octobre 1987. Elle s'intéresse vivement aux questions locales d'ordre environnemental et a présenté des exposés sur la gestion des déchets dans son canton. Elle a participé au projet de nettoyage de la rive d'Eganville, et est présidente sortante de l'Association commerciale régionale d'Eganville.

Membres de la Commission des évaluations environnementales

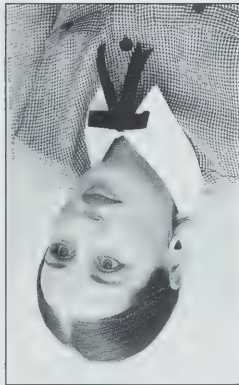
Barbara Doherty, de Toronto, est vice-présidente à plein temps de la Commission depuis novembre 1988. Elle a obtenu son baccalauréat en sciences de l'Université de Western Ontario en 1977 et son diplôme en droit d'Osgoode Hall en 1980. Elle a été admise au barreau en 1982. Mme Doherty a exercé le droit civil à Toronto et a comparu à titre d'avocate devant un large éventail de tribunaux judiciaires et de tribunaux administratifs jusqu'à sa nomination à la Commission.



Paul F.J. Eagles, m.c.i.p., est membre à temps partiel et représente Cambridge. M. Eagles détient un baccalauréat en biologie et une maîtrise en zoologie et en mise en valeur des ressources de l'Université de Guelph, et un doctorat en aménagement régional et urbain de l'Université de Waterloo, où il enseigne actuellement. M. Eagles a publié de nombreux ouvrages sur l'écologie appliquée, la gestion des ressources et les loisirs de plein air.



Robert B. Eisen, c.r., est vice-président à plein temps de la Commission. Il a obtenu son baccalauréat en sciences politiques et en économique de l'Université de Toronto en 1951 et son diplôme en droit d'Osgoode Hall en 1955. Il a été professeur à temps partiel à cet endroit, où il a enseigné le cours d'admission au barreau. Il a exercé le droit commercial depuis son inscription au barreau jusqu'à sa nomination à la Commission en mars 1981.



Esther M. Jacko est membre à temps partiel et représente Birch

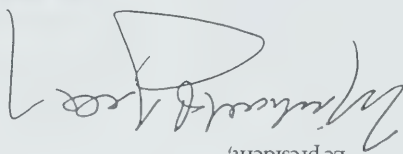
Island. Mme Jacko est gestionnaire des terres du Conseil de la première nation de Whitefish River. Son domaine de spécialisation est la gestion des terres indiennes. Elle connaît également à fond les traités indiens et l'histoire de l'île de Manitoulin. Mme Jacko est présidente du Inter-Reserve Lands Management Committee. Elle s'occupe de gestion de l'environnement depuis plusieurs années, à titre de porte-parole des autochtones pour l'Algonquin-Manitoulin Nuclear Awareness Group. Mme Jacko est également membre de la North Channel Preservation Society, qui s'emploie à conserver l'intégrité historique et environnementale de Nehahpukung, aussi appelé Casson's Peak, à Baie Fine. Elle a été nommée à la Commission en avril 1989.



Michael L. Jeffery, c.r., est une autorité en matière de droit administratif. Il détient une maîtrise en droit de l'environnement d'Osgoode Hall. M. Jeffery a exercé le droit à Toronto pendant 14 ans avant sa nomination à la Commission en 1981. Il est actuellement coprésident du Comité du droit de l'environnement de l'Association internationale du barreau, président sortant du Council of Canadian Administrative Tribunals, éditeur canadien du *Environmental and Planning Law Journal* et rédacteur en chef du *Canadian Journal of Administrative Law and Practice*.

assurée de disposer du cadre administratif et législatif et des règles nécessaires pour traiter efficacement et équitablement les affaires dont elle est saisie. Cela dit, elle ne relèvera pas ces défis au détriment de l'intérêt public.

Le président,



Michael I. Jeffery, c.r.



d'audience. Cette activité comprenait une allocution informative de M. le juge Robert F. Reid de la Cour suprême de l'Ontario sur l'adaptation de la conférence préparatoire à l'audience, utilisée dans le système judiciaire, en fonction de règles administratives comme les nôtres. Nous avons également invité les professeurs Audrey Armour et Peter Homenuk de la Faculté des études environnementales de l'Université York, qui ont parlé de l'évaluation des incidences sociales à une de nos assemblées mensuelles. Nous prévoyons de tenir une autre table ronde plus tard cette année.

Que réserve l'avenir?

La Commission participera à un certain nombre d'audiences importantes au cours des deux prochaines années, dont l'une, qui porte sur l'évaluation environnementale de portée générale pour la gestion du bois d'oeuvre, est en cours depuis un an. Des réunions de procédure ont eu lieu au sujet de la demande d'installations de traitement des déchets dangereux présentée par la Société ontarienne de gestion des déchets; cette audience devrait débiter vers la fin de 1989. En outre, un certain nombre de demandes de décharges seront soumises à la Commission, ainsi que la première demande faisant intervenir la destruction de BPC par des unités mobiles.

Au cours des prochains mois, la Commission modifiera son règlement intérieur pour y inclure les changements qui résultent de ses propres initiatives en matière de procédure, de la Loi sur le projet d'aide financière aux intervenants et des pouvoirs qu'elle a récemment acquis en matière d'adjudication des dépens.

Nous continuerons également à élaborer, de concert avec la Commission des affaires municipales de l'Ontario, un règlement intérieur régissant le fonctionnement des commissions mixtes.

Au seuil des années 1990, la Commission des évaluations environnementales est

Message du président

Nos rapports avec l'environnement ont toujours été précoces et problématiques, mais les futurs historiens écriront fort probablement que l'année 1988-1989 a vu ces rapports mis à rude épreuve. Sur le plan national, le Canada a été aux prises avec l'incendie d'un entrepôt de BPC à Saint-Basile-le-Grand et avec un déversement de pétrole à Puget Sound qui a causé de graves dégâts écologiques le long des rives de l'île de Vancouver. En outre, les États-Unis ont connu la pire marée noire de toute l'histoire de l'Amérique du Nord lorsque le Valdez de la compagnie Exxon s'est échoué dans le détroit de Prince William, déversant quelque 58 millions de litres de pétrole brut dans les eaux et, de là, sur des centaines de milles le long de la côte de l'Alaska, avec des effets incalculables sur le milieu aquatique. À l'échelle mondiale, l'année 1988-1989 a vu l'attention se tourner vers divers problèmes tels que le décroissement de la forêt tropicale humide du Brésil, l'appauvrissement continu de la couche d'ozone par les émissions de fluorocarbures, de même que les préoccupations de plus en plus généralisées des milieux scientifiques en ce qui concerne l'origine et les conséquences de « l'effet de serre ». L'environnement continue de prendre un dur coup partout, mais il y a tout de même des signes que les habitants de la planète se rendent finalement compte de l'envergure du problème et reconnaissent enfin que notre survie n'est possible que si l'on s'attaque concrètement aux causes fondamentales de la dégradation de l'environnement. Dans tout le monde industrialisé, les stratégies semblent adopter le thème central du rapport Brundtland suivant lequel un développement économiquement durable qui soit écologiquement viable est essentiel au maintien de la prospérité économique.

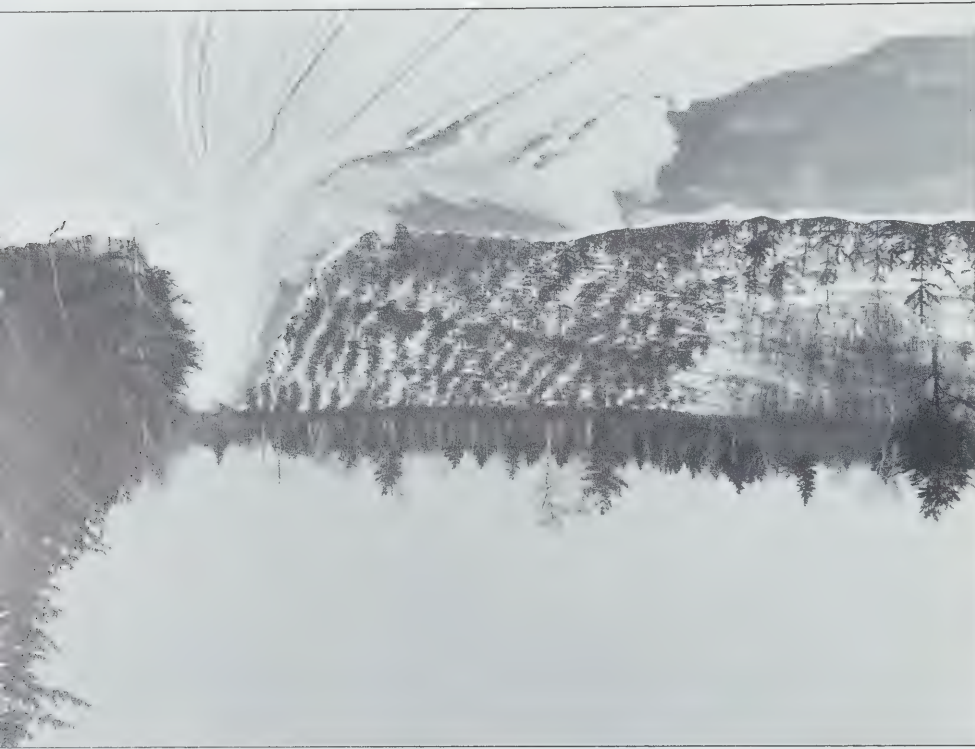
Vu la priorité accordée aux préoccupations écologiques dans l'opinion publique, il n'est pas surprenant de constater que la Commission des évaluations environnementales continues à jouer un rôle de plus en plus grand, travaillant de concert avec le gouvernement, l'industrie et le public pour veiller à ce que les projets qui lui sont soumis aux fins d'approbation ne portent pas atteinte à l'environnement. Pour nous acquitter de nos responsabilités, nous avons continué de prendre de l'expansion et de nous adapter aux changements législatifs et aux changements dans la nature des demandes qui nous sont soumises. Au sein de la Commission elle-même, la nomination de Mme Barbara Doherty, de Toronto, au poste de vice-présidente a porté à sept le nombre de membres à plein temps, y compris le président. Parmi les six membres du temps partiel, M. O.P. Dwivedi est parti en avril 1989 et a été remplacé au début de mai par Mme Esther Jacko de Birch Island, qui remplira un mandat de trois ans. L'an dernier, l'administration a emménagé dans de nouveaux locaux situés au 2300, rue Yonge. Cette année, nous avons terminé la réorganisation associée à ce déménagement, y compris l'agrandissement des locaux. Après les difficultés de rodage normales, notre nouveau système de traitement de texte et d'extraction des données est presque totalement opérationnel et comprend maintenant des fonctions de comptabilité financière perfectionnées qui nous permettent de nous acquitter des responsabilités qui incombent à la Commission en vertu de la Loi de 1988 sur le projet d'aide financière aux intervenants. Une base de données comprenant les rapports, les décisions et autres documents pertinents de la Commission a été créée et devrait être accessible au public d'ici quelques mois. En outre, notre personnel administratif a augmenté pour que nous puissions nous occuper rapidement et efficacement des audiences. La compétence de la Commission a été modifiée de façon importante par diverses mesures législatives; ces changements seront examinés en détail plus loin dans le présent

rapport. Par exemple, les modifications apportées à la Loi sur la protection de l'environnement et à la Loi sur les ressources en eau de l'Ontario donnent des pouvoirs décisionnels à la Commission, alors qu'auparavant elle n'était habilitée qu'à soumettre des recommandations au directeur des Autorisations, fonctionnaire du ministère de l'Environnement, qui prenait la décision finale. Par l'adoption en décembre 1988 de la Loi sur le projet d'aide financière aux intervenants et sa promulgation le 1er avril 1989, le gouvernement a rempli son engagement et facilité l'accès aux audiences pour les personnes qui autrement n'auraient pas les ressources financières nécessaires pour y participer. Cette loi, qui est en vigueur pour une période d'essai de trois ans, accorde également à la Commission le pouvoir législatif d'adjudger les dépens à la conclusion d'une audience sans qu'elle ne soit liée par les critères utilisés par les tribunaux judiciaires pour l'adjudication de ces dépens. La Loi sur les évaluations environnementales, l'une des lois les plus importantes qui régit la Commission, fait actuellement l'objet d'un examen approfondi qui aboutira probablement à l'importation de modifications dans un avenir rapproché. Entre temps, la Commission a mis de l'avant de son propre chef un certain nombre de règles conçues pour améliorer et simplifier les processus d'audience, notamment des règles visant à établir et à clarifier la portée des questions en litige ainsi que des mesures destinées à accélérer les témoignages oraux à l'occasion des audiences, abrégeant ainsi le processus dans la mesure du possible. Ces réformes, amorcées l'an dernier avec l'élaboration de notre règlement intérieur, demeurent une priorité étant donné le nombre de demandes extrêmement complexes dont est maintenant saisi la Commission. De concert avec la Commission des affaires municipales de l'Ontario, nous avons tenu un atelier dans le but d'échanger des idées sur diverses questions liées au processus

Rapport annuel de la Commission des évaluations environnementales 1988-1989

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Commission des évaluations environnementales Rapport annuel

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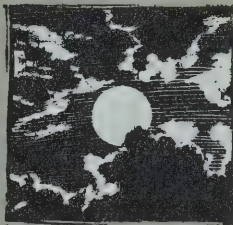
Government
Publications



ENVIRONMENTAL ASSESSMENT BOARD



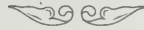
Annual Report



FISCAL YEAR
ENDED MARCH 31st 1991

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Further information available from:
The Board Secretary, Environmental Assessment Board,
P.O. Box 2382, 2300 Yonge Street, Suite 1201, Toronto, Ontario M4P 1E4
Tel: (416) 323-4806



MESSAGE FROM THE CHAIR



he quality of life

in this province and the future of its economy depend on conserving our resources and protecting our environment. Since 1987 and the release of Our Common Future, the report of the World Commission on Environment and Development (the Brundtland Commission), people and governments have become much more aware of the inextricable links among environmental health, economic health, and the human condition. Now, four years later, countries around the world are still struggling to understand and apply the concept of environmentally sustainable economic development first articulated in the report.

Last fall, the Ontario Round Table on Environment and Economy published a "challenge paper" outlining its guiding principles for implementing sustainable development. They are:

- anticipating and preventing environmental problems;
- requiring thorough environmental cost-accounting for development proposals;
- making informed decisions;
- conserving our environmental capital by living off the interest, not the capital;
- putting quality of development before quantity;
- respecting nature; and
- respecting the rights of future generations.

The principles underlying the evolving application of Ontario's *Environmental Assessment Act* coincide with those of the Round Table. Increasingly, under the Act, development programs, plans, and projects reviewed by the Environmental Assessment Board (EAB) are subject to scrutiny by members of the public who demand that proponents adhere to the principles of environmentally sustainable development.



GRACE PATTERSON
CHAIR

Undertakings such as waste management master plans, the Ministry of Natural Resources' Crown land timber management plan, Ontario Hydro's 25-year electricity demand/supply plan, the Ontario Waste Management Corporation's hazardous waste treatment and disposal facilities plan, and a variety of other projects and proposals are currently undergoing public review through the environmental assessment process and Board hearings.

More than a decade of experience with the environmental assessment process has given the Board valuable insight into the evolving role of assessment in environmental planning and protection.

During this time, the assessment process has become a lightning rod for growing public dissatisfaction with the state of the environment. As a result, the role of environmental assessment has expanded to accommodate public demands for meaningful involvement in decisions relating to environmental protection and planning. While the environmental assessment process has successfully stimulated public involvement in environmental

planning, it has been criticized as too costly, time-consuming, and complex.

Both the environmental assessment process and the legislation under which it operates are now under review – a watershed in their existence. If the Act is to be applied more broadly, the process must be more efficient.

More efficient operations are possible: for example, amendments to the Act could strengthen and clarify the role of environmental assessment as a public planning process; improved public consultation measures would facilitate meaningful public involvement at all stages of the process; development of generic guidelines and principles would provide unambiguous direction to proponents; and strategic allocation of resources would improve the co-ordination of the public planning process and of governmental review. These and other improvements are anticipated when the three-year review of the environmental assessment process is completed shortly.

The environmental assessment hearing process is also changing. The EAB recently held public Round Tables to discuss new ways to facilitate public participation while continuing to conduct fair and efficient hearings. The results of these discussions encouraged us to expand the Board's case management techniques, the details of which are now being discussed. The overall goal is for the Board to exert more control over its process.

With the public demanding a role in environmental planning and protection, early and ongoing public involvement in environmental assessment – where it is most constructive and cost-efficient – will mean investing more resources in those earlier stages.

Applying the *Environmental Assessment Act* to waste management planning demonstrates the positive influence the environmental assessment process and the Environmental Assessment Board hearings can exert on environmental planning and protection; clearly, progress is being made in the difficult task of reconciling the disparate interests and values held by the public and by proponents.

When the Act was passed 15 years ago, the concepts of reducing, re-using, and recycling were considered impractical, uneconomical, and unnecessary – the idealistic indulgence of a few environmentalists. Today these "Three Rs" are becoming entrenched in the vocabulary and actions of citizens and businesses, and a fourth R is being added: reject – reject over-packaged and unrecyclable goods.

Increasingly, as clean air, clean water, productive land, and green-space are threatened, their value becomes clearer in the minds of the public. As a result, people are less tolerant of activities that may further diminish our quality of life or degrade our natural environment.

By facilitating public input into the planning and decision-making process, the *Environmental Assessment Act* has ensured that evolving

public values are factored into waste management strategies. As people contribute to the process of environmental assessment, they also adopt environmental values which stimulate a fundamental rethinking of lifestyles and attitudes and encourage adoption of the principles of sustainability.

Intervenor funding makes our hearings more accessible and affordable to members of the public, ensures that people can more effectively express their environmental concerns, and enables intervenors to acquire the knowledge and expertise to formulate innovative solutions to environmental problems. Funding to accomplish these aims may involve significant dollar amounts, but these must be measured against the value of the undertakings being assessed, and the importance of minimizing the adverse effects such projects may have on the environment.

The principles of sustainable development and of ecosystem planning are now somewhat amorphous – little more than statements of good intentions. To be effective, they must be integrated into land-use planning, resource management, and environmental protection. Applying them within

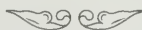
the Environmental Assessment Program will help address such important issues as resource conservation, the cumulative impact of actions and decisions, environmental carrying capacity, quality of life, and effects on native communities.

The Environmental Assessment Board is taking steps to ensure that its hearing process becomes more accessible, affordable, effective, and efficient. At the same time, we will continue to strive to reach decisions that protect the environment, promote sustainable human activities, and respect the interests of current and future generations.



GRACE PATTERSON
CHAIR

MEMBERS OF THE BOARD



GRACE PATTERSON has been the Chair of the Environmental Assessment Board since February 1990, after having been a Vice-Chair since 1986 and, prior to that, practising environmental law with the Canadian Environmental Law Association. She was a director of several environmental organizations and served on the Science Advisory Board of the International Joint Commission and on the Canadian Environmental Assessment Research Council. Ms Patterson was also a special lecturer on environmental law at Queen's University Law School.



GRACE PATTERSON



BARBARA DOHERTY

BARBARA DOHERTY of Toronto is a full-time Vice-Chair appointed to the Board in November 1988. A graduate of the University of Western Ontario in 1977 (B.Sc.) and of Osgoode Hall Law School in 1980, Ms Doherty was called to the Bar in 1982. She practised civil litigation in Toronto and appeared before a wide variety of courts and administrative tribunals until she was appointed to the Board.



LEN GERTLER



DR. JIM KINGHAM

LEN GERTLER is a full-time Vice-Chair who, before joining the Board full-time in September 1990, was a professor in the School of Urban and Regional Planning, Faculty of Environmental Studies, University of Waterloo. He is a Fellow of the Canadian Institute of Planners and serves on the Governing Board, Commonwealth Human Ecology Council. He has combined his knowledge of planning, development, and environmental management in both an urban and regional context and is the author of several books on those subjects.

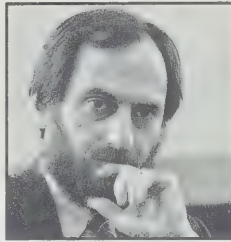
DR. JIM KINGHAM is a full-time Vice-Chair and has been involved in environmental work for more than 20 years, as a water quality research scientist and a manager. He was a negotiator for Law of the Sea provisions dealing with the marine environment while also chairing the Anti-Pollution Working Group of the Intergovernmental Maritime Organization. Before joining the Board in 1987, Dr. Kingham was Director-General for the Ontario Region of Environment Canada and was the Canadian Chairman of the IJC Water Quality Board.

ANNE KOVEN is a full-time Vice-Chair. Appointed to the Board in April 1987, Ms Koven holds an M.A. degree in public administration from Queen's University. From 1981 to 1986, she was research director of the Upper Ottawa Landfill Site Study, commissioned by the Ontario Ministry of Health. She has worked in the mining industry and with the Ontario Advisory Council on Occupational Health and Safety.



ANNE KOVEN

ALAN D. LEVY is a full-time Vice-Chair and was appointed to the Board in May 1990. He holds B.A. and LL.B. degrees from the University of Toronto. For 18 years he practised litigation law, appearing before both courts and tribunals. Mr. Levy was one of the founders of the Canadian Environmental Law Association, and remained a member of its board of directors for 20 years, until his appointment.



ALAN D. LEVY

ELIE W. MARTEL is a full-time Vice-Chair. A teacher and elementary school principal in Capreol until 1967 when he was elected to the Legislative Assembly, where he served as the New Democratic Party member for Sudbury East until 1987. Mr. Martel was his party's House Leader from



ELIE W. MARTEL

1978 to 1985 and, as a member of the legislature, worked extensively on environmental issues. The author of two major reports on health and safety in the workplace, Mr. Martel was appointed to the Board in March 1988.

MARY G. MUNRO is full-time Executive Vice-Chair of the Board from Burlington. A Registered Nurse by profession, she has been active in community and environmental affairs for many years, having served on various boards and commissions. Mrs. Munro is a former City Alderman, Regional Councillor, and Mayor of the City of Burlington. She was appointed to the Board on 1 September 1981.



MARY G. MUNRO

JIM ROBB is a full-time Vice-Chair from Scarborough. He holds B.Sc. and Forestry degrees and a Commercial Pilot Licence. Prior to joining the Board in September 1990, Mr. Robb owned and operated an urban tree care business. As the past chairman of Save the Rouge Valley System, he worked on watershed conservation issues. Mr. Robb has written for various publications and his photographic credits include the cover of the second interim report of the Royal Commission on the Future of the Toronto Waterfront, *Watershed*.



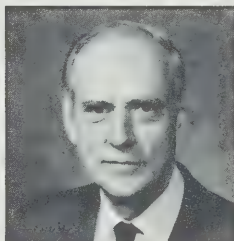
JIM ROBB

THE HON. MR. JUSTICE EDWARD SAUNDERS was appointed to the Board in May 1990 to chair the Hydro Demand/Supply Plan hearing. For the past 13 years he has been a member of the Ontario Court of Justice (formerly the Supreme Court of Ontario). Prior to that, he practised law in Toronto. He is a graduate of the University of Toronto and Osgoode Hall.



THE HON. MR. JUSTICE
EDWARD SAUNDERS

DR. GEORGE CONNELL is a part-time Vice-Chair from Toronto, appointed to the Board in January 1990. He is a former president of the University of Western Ontario and the University of Toronto, an Officer of the Order of Canada, and a Fellow of the Royal Society of Canada. He is a member of several professional societies including the Canadian Biochemical Society (President, 1973-74), the American Society of Biological Chemists, and the Canadian Society for Immunology. Dr. Connell chairs the National Round Table on the Environment and the Economy.



DR. GEORGE CONNELL



DR. KATE DAVIES

DR. KATE DAVIES is a part-time member from Ottawa, appointed to the Board in July 1990. She holds a doctorate in biochemistry from Oxford University and, prior to her appointment, was manager of the City of Toronto's Environmental Protection Office. She has also had appointments to the International



JOHN DUNCANSON

Joint Commission's Science Advisory Board and the Canadian Environmental Assessment Research Council. Dr. Davies is currently the president of Ecosystems Consulting Inc.

JOHN DUNCANSON, a part-time member, lives in Orangeville. He obtained a B.A. from the University of Toronto in 1947 and a Business Certificate in 1968. He held various management appointments with Bell Canada from 1947 to 1969, and was the Director of the Department of Alumni Affairs at the University of Toronto from 1969 until 1974. In 1975, he became a Hearing Officer under the *Niagara Escarpment Planning and Development Act* and was cross-appointed to the Board on 1 January 1991.



DR. PAUL F.J. EAGLES

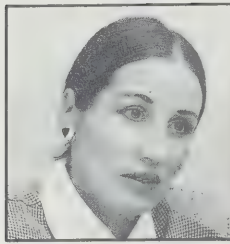
DR. PAUL F.J. EAGLES is a part-time member from Cambridge, appointed to the Board in December 1987. Dr. Eagles holds a B.Sc. in biology from the University of Waterloo, an M.Sc. in zoology and resource development from the University of Guelph, and a Ph.D. in urban and regional planning from the University of Waterloo. At present, he is a faculty member of the Department of Recreation and Leisure Studies at the University of Waterloo. Dr. Eagles has written extensively on applied ecology, resource management, and outdoor recreation.

MEMBERS OF THE BOARD

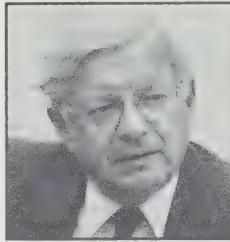
ESTHER JACKO, appointed in April 1989, is a part-time member of the Board from Birch Island, where she is the Lands Manager for the Whitefish River First Nation Council. Ms Jacko served as the native spokesperson for the Algoma-Manitoulin Nuclear Awareness Group and is also a member of the North Channel Preservation Society, which is attempting to preserve the historical and environmental integrity of Nehahupkung, also known as Casson's Peak, in Baie Fine. She is currently a member of the Canadian Environmental Assessment Research Council.

JOHN MCCLELLAN is a part-time member from Brantford. A geographer, he has been involved in land-use matters for 30 years. From 1974 to 1988 he was executive director of the Prince Edward Island Land Use Commission. Since 1989 he has been a Hearing Officer under the *Niagara Escarpment Planning and Development Act*. He was cross-appointed to the Board as of 1 January 1991.

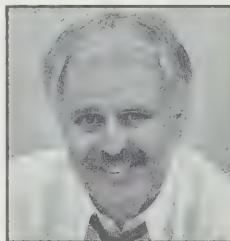
RICHARD PHARAND, a part-time member, is a bilingual lawyer, the senior partner of the Sudbury firm of Pharand Kuyek. Mr. Pharand is a



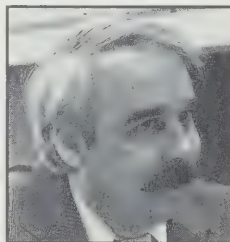
ESTHER JACKO



JOHN MCCLELLAN



RICHARD PHARAND



ALAN WILLIAM ROY



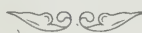
ELAINE B. TRACEY

member of the Advocates' Society and Legal-Aid Area Director for the Districts of Sudbury and Manitoulin. He was appointed to the Environmental Assessment Board on 14 April 1986.

ALAN WILLIAM ROY is a part-time member. A science graduate from Sir George Williams University and Queen's University, Mr. Roy has lengthy scientific experience in fisheries protection. A resident of Brighton, he is currently environmental director for the Union of Ontario Indians and was appointed to the Board in April 1987.

ELAINE B. TRACEY is a part-time member who was appointed to the Board in October 1987. She was involved in community environmental activities in Eganville and headed a committee to clean up the local riverfront. She is a volunteer director of the Valley Savings Credit Union (Renfrew County), past president of the Eganville and District Business Association, and recipient of the Business Person of the Year Award. Mrs. Tracey works part-time in a family owned and operated newspaper business.

THE BOARD'S JURISDICTION



This matrix presents the four basic features of each Act under which the Board may conduct hearings.

JURISDICTION FEATURES

ACT AND ITS PURPOSE	INITIATIVE FOR HEARING	HEARING SUBJECTS	BOARD AUTHORITY	APPEALS, AND OTHER
Environmental Assessment "protection, conservation, wise management"	<ul style="list-style-type: none"> Minister of the Environment, responding to proponent, or interested person, or where the Minister considers it advisable (Sections 12 & 13) 	<ul style="list-style-type: none"> "Undertaking" – proposal, plan or program Public sector, unless exempted by the Minister Private sector, if designated, by the Minister 	<ul style="list-style-type: none"> Accept or Amend EAs Approve, approve with "terms and conditions", or reject Decisions final, unless altered by Cabinet May award costs Board determines its own practice & procedure (Section 18(12)) 	<ul style="list-style-type: none"> Within 28 days, to the Minister; and subject to a Cabinet decision (Sections 23 & 14) Judicial review (common law)
Environmental Protection "the protection and conservation of the natural environment"	<ul style="list-style-type: none"> Director of Approvals – MOE, either mandatory, or discretionary (Sections 30, 32, 35) Individual request for contaminant damage to vegetation or live stock (Section 134) 	<ul style="list-style-type: none"> Mandatory, for waste disposal site equivalent in size, for 1,500 persons Discretionary, for other sites or waste management systems, & affecting by-laws Contamination (S.134) 	<ul style="list-style-type: none"> Board's decision implemented by the Director unless appealed (Section 33(4), 33a) May award costs Assess injury/damage & negotiate claim settlement 	<ul style="list-style-type: none"> Party may appeal – on a question of law, to Divisional Court On other issues, to Cabinet (within 30 days) Cabinet may confirm, alter or revoke
Ontario Water Resources enabling Minister of Environment to develop and regulate water & sewage services	<ul style="list-style-type: none"> Director of Approvals – MOE, mandatory, or discretionary (Sections 25(1), 26(1), 43(4)) 	<ul style="list-style-type: none"> Mandatory, for sewage works in or into a municipality not itself the applicant, & applications re: areas of public water & sewage service Discretionary, for sewage works within applicant's own municipality 	<ul style="list-style-type: none"> Board gives public notice, if no objections, hearing not required Decision implemented by Director unless appealed; (Sections 6(4), and 6a) 	Same appeal rights as the EPA, above
Consolidated Hearings for undertakings requiring more than one hearing	<ul style="list-style-type: none"> Proponent through notice to Hearings Registrar on own initiative (Sections 3 & 4) 	<ul style="list-style-type: none"> Undertakings, under 12 Acts in the Schedule of CHA, included Acts above, and <i>Planning Act</i> and <i>Niagara Escarpment Planning & Development Act</i> 	<ul style="list-style-type: none"> Joint Board's decision in effect, unless appealed to Cabinet Board determines its own practice & procedure (S.7) May award costs 	<ul style="list-style-type: none"> If a decision is not appealed within 28 days of the date of issue, it becomes final Otherwise, Cabinet may "confirm, vary or rescind" (Section 13) Judicial Review Procedure Act (S.15(2))
Intervenor Funding Projects "a pilot project" for intervenor funding for boards' proceedings	<ul style="list-style-type: none"> Parties with intervenor status, for hearings before EAB, Ont. Energy Board, or a Joint Board, by application to board (Section 3) 	<ul style="list-style-type: none"> Submissions for funding on issues affecting (i) a significant segment of public, and (ii) the public interest, not just private interests 	<ul style="list-style-type: none"> Determine the funding proponent Refuse or grant awards Supervise & enforce "conditions of an award" 	<ul style="list-style-type: none"> Appeal on "a matter of law", to the High Court (Section 13) Judicial review (common law)
Public Inquiries to provide a forum for public issues, not covered by other Acts	By Order-in-Council	<ul style="list-style-type: none"> Issues affecting the good government of Ontario, e.g. environmental for EAB 	<ul style="list-style-type: none"> Summon witnesses and documentary evidence, appoint investigators, etc. Board issues report 	Not relevant, for a reporting function

A REVIEW OF THE ENVIRONMENTAL ASSESSMENT PROCESS: PREPARING FOR THE FUTURE



Given the increased public awareness of environmental issues, and the growing determination to affect environment-related decisions, it is hardly surprising that the assessment process has become increasingly important and now must, itself, be assessed.

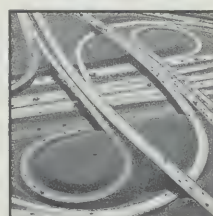
The Ministry of the Environment has done so through its formation of the Environmental Assessment Task Force, established in 1989. The Task Force paper, *Toward Improving the Environmental Assessment Program in Ontario*, was referred by the Minister of the Environment to the Environmental Assessment Advisory Committee (EAAC); that body has been given the task of conducting public consultations on the issue. The Committee's recommendations will be considered as part of revisions to the *Environmental Assessment Act*, which are expected before the end of 1991.

The Board participated in the consultation process by producing *The Hearing Process: Discussion Papers on Procedural and Legislative Change, 1990*, a document it distributed widely among interested public, legal, and expert groups. Based on their responses, it prepared and presented a report, *Recommendations on the EA Task Force Report*, to the EAAC. It addresses such questions as: what programs and plans should be

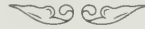
subject to environmental assessment? on the basis of what criteria? how should Board hearings be changed to deal with increasingly complex programs and plans?

The Board's experience, after more than a decade of hearings, shows that the more complex the assessment, the greater the need for an investigative approach that will satisfy both the public interest and the Board's need for information. At the same time, however, the greater use of legal advisors to represent various interests at hearings has made the process more adversarial. The Board is responding to these changes by refining its existing case management system, which treats each case on its own merits, rather than according to any predetermined style.

The Board has already agreed to conduct an informal hearing, as suggested by the Task Force, to involve all interested parties in formulating guidelines for the Ministry to provide direction for proponents, intervenors, and the Board itself. These will cover such issues as the use of scientific data and the differences in assessing a plan, as distinct from assessing a project. The Board hopes that the review process will also clarify the role environmental assessment should play in government policy.



MAJOR HEARINGS



One of the most significant shifts in attitude over the past decade has been the recognition by successive Ontario governments that major new policy or program proposals must be submitted to environmental assessment. This change is generally welcomed by the public, but it raises a number of questions about the length and cost of hearings, which have to be addressed.

Consider three important hearings now before the Board, which arise from provincial program objectives, and in which the Province of Ontario or a Crown corporation is the proponent: Timber Management; the Ontario Waste Management Corporation; and the Ontario Hydro Demand/Supply Plan.

In the past there was concern that a "David" (the intervenor) was being pitted against a "Goliath" (the proponent). Now, however, proponents are worried that funding awards will make the process too costly and lengthy, and will affect their chances of succeeding. The Board's heavy hearing load is growing, not just because there are initial panels to hear applications for intervenor funding, but because supplementary funding applications must be dealt with by the hearing panel during the main hearing. Moreover, the administration of funding awards is itself complex and time-consuming.

Effective use of information is critical to the outcome of major hearings, because of the complexity of issues and the large number of parties involved. The Board's way of responding to this need

is perhaps best illustrated by the Ontario Hydro Demand/Supply Plan hearing. The initiatives address two related aspects of dealing with information: identifying and focusing on major issues, and ensuring that the public has access to hearing information.

In these large (and, of necessity, long) hearings, steps are being taken to anticipate problems and we are trying to shorten the hearings without compromising the standards by which we operate. Everyone involved knows that improvements are possible: the Board could take tougher stands on limits to oral examination and on deadlines for filing documents; proponents could upgrade their presentations; public agencies could co-operate with each other to prevent process problems; and members of the public could better recognize the strengths and limitations of the environmental assessment process.

TIMBER MANAGEMENT HEARING

In the past year, two major intervenors completed their cases in the Board's hearings of the Ministry of Natural Resources' Class Environmental Assessment of Timber Management on Crown lands in Ontario. The Ontario Forest Industry Association/Ontario Lumber Manufacturers Association, supporting the Ministry's application, presented evidence from 50 witnesses over 44 hearing days. Forests For Tomorrow, a coalition of the Botany Conservation

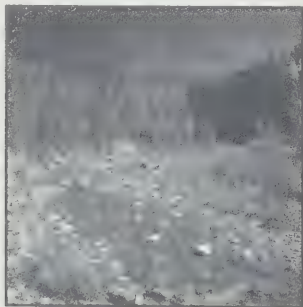
Group of the University of Toronto, the Federation of Ontario Naturalists, the Sierra Club of Ontario, the Temiskaming Environmental Action Committee, and the Wildlands League, all opposed to the application, completed their case, involving 20 witnesses and 62 hearing days.

The panel also heard submissions from the Northwestern Ontario Associated Chambers of Commerce, the townships of Ear Falls and Golden and Red Lake, and the Northwestern Ontario Municipal Association, as well as the Canadian Association of Professional Heritage Consultants and the Ontario Professional Foresters Association.

Extensive public consultation with people living and working in Northern Ontario influenced the hearing. Public meetings were held in Sault Ste. Marie, Espanola, Timmins, Hearst, and Geraldton in August and September 1990. The Environmental Assessment Board arranged simultaneous French translation under the *French Language Services Act*, an initiative that was well received in these communities.

The hearing panel is conducting informal meetings to hear from a broad range of interests, including: aboriginal communities, loggers, tourist operators, anglers, hunters, trappers, tree growers and planters, representatives of municipalities, mining prospectors, cottagers, unionized workers and managers, naturalists, truckers, small-business people, and scientists.

The panel expects that the remainder of the Timber Management hearing will conclude in December 1992.



ONTARIO WASTE MANAGEMENT CORPORATION HEARING

The Ontario Waste Management Corporation (OWMC) has applied for permission to construct and operate a large, multi-faceted hazardous waste treatment and disposal facility in Smithville, in the Township of West Lincoln (Regional Municipality of Niagara). The facility would receive wastes from across the province. The application is also for approval of a planning process for hazardous waste collection and for transfer stations throughout the province, should such stations be necessary.

The matter is being heard by a Joint Board under the *Consolidated Hearings Act, 1981*, with one member from the Ontario Municipal Board (OMB) and two from the Environmental Assessment Board.

The hearing has been structured in phases so that the Board can consider all the evidence concerning relatively discrete topics at one time. These topics include the need for the facility, alternative methods of providing service to deal with hazardous wastes, site selection, engineering design, and the impact of the proposed facility on the local area.

The Board has now heard evidence concerning the need for and alternatives to the proposed facility.

At the end of this first phase, certain of the parties brought a motion asking the Board to dismiss the application on the grounds that the proponent had not complied with the requirements of the *Environmental Assessment Act*. After hearing submissions, the Board found that the evidence did not support dismissal of the application.

At the same time, the Ministry of the Environment brought a motion asking the Board to find that there was a need for additional off-site final treatment and disposal capacity for hazardous wastes in Ontario. The Board found that, on the evidence, a need had been established.

ONTARIO HYDRO DEMAND/SUPPLY PLAN HEARING

In 1989, Ontario Hydro published a series of reports under the title *Providing the Balance of Power: Ontario Hydro's Plan to Serve Customers' Electricity Needs*. The reports contain the utility's long-range plans for providing electrical energy to the people of Ontario. On 6 November 1989, the Minister of Energy announced that the plan, known as the Demand/Supply Plan, would be subject to a review and a public hearing under the *Environmental Assessment Act*. The panel appointed to conduct the hearing comprises Mr. Justice Edward Saunders, of the Ontario Court of Justice, Grace Patterson, Chair of the Environmental Assessment Board, and Dr. George Connell, former president of the University of Toronto.

More than 200 individuals and groups are taking part in the hearing. Once party status had been granted, a funding panel, conducted by Board member Mary Munro, reviewed applications from 36 intervenors for more than \$60 million and awarded funding totalling more than \$21 million. Funds are being used to hire lawyers and case managers, retain experts to review Hydro's evidence, provide evidence on behalf of parties, and cover eligible disbursements.

Because of the large numbers of parties involved, the significant interest shown by the public in the hearing, and the technical nature of a great deal of the evidence, techniques have been developed to communicate and provide information in this potentially unwieldy case. In fact, special rules have been adopted for exchanging the massive amount of information involved.

Meetings among the parties were held to discuss how to deal with information and how to provide transcript search and public-file access at the hearing and in regional centres throughout the province. The panel also drafted rules for procedures

before issuing them as supplementaries to the existing rules in the Board's Rules of Practice and Procedure.

In the process that has been adopted, questions for later witness panels will be due at progressively later dates, but the enormity of the task may be judged by the fact that more than 5,000 interrogatory questions were posed even before the panel began to hear evidence.

A great deal of the proponent's documentation has already been filed and, in reviewing it, the panel asked that Hydro present only an overview of the evidence of each witness panel, and an estimate of the number of hours – usually fewer than ten – it anticipates will be needed by each one.

The scope of the evidence to be called and the cross-examination to be undertaken will be decided when Statements of Concern and Statements of Proposed Issues are exchanged among those parties interested in a particular witness panel. The result should be short meetings to approve the agreements that have been negotiated.

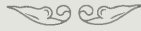
The order of cross-examination is also decided, to the extent possible, by prior agreement among the parties. Regular communications from panel staff will provide the parties and participants with information on the current status of the hearing and related matters.

Communications include a weekly mailing to participants and, in addition, there will be a daily message on the toll-free line to provide information to the public.

Over the next several months, Ontario Hydro will present its evidence through its panels of expert witnesses. Once the cross-examination of those panels is complete, other parties will have the opportunity to present their own cases and will, in turn, be subject to cross-examination by Hydro and other parties.

The issues are complex and the results of the process will be important in deciding Ontario's economic and energy future.

THE IMPORTANCE OF BEING PREPARED



The following two cases, the Enterac Subdivision proposal and the Avondale North Clay Borrow Pit application, were decided in the past year. They highlight the importance of proponents being well prepared before a hearing begins. The hearing boards found that, in these cases, the proponents' cases were not sufficiently prepared. As a result, they dismissed the application in one case and deferred the application in the other, with certain conditions, to another Joint Board.

ENTERAC DECISION

A private developer proposed to build a 73-unit subdivision adjacent to the village of Belfountain in the Town of Caledon. Because the development would be in an area covered by the Niagara Escarpment Plan, the proponent applied to the Niagara Escarpment Commission for necessary development permits. The Commission refused the applications and the matter came before the Board when the developer appealed the Commission's decision. Because a zoning by-law appeal was also mounted, the matter was heard by a Joint Board of OMB and EAB members, as established under the *Consolidated Hearings Act, 1981* (CHA).

At the conclusion of the proponent's case, a motion was brought to refuse the application even before hearing opponents' evidence because the proposal seemed to be shifting its character almost daily. The Board granted the motion and upheld the Niagara Escarpment Commission's refusal of development permits. It noted that

eight ... permutations were eventually presented to the Board [in eighteen days of evidence, and included] a revised subdivision concept ... which the Board was invited to accept ... as the proponent's ... application.

[The Board was convinced that there was sufficient evidence to dismiss the application] on the grounds of prematurity, significant inconsistency in major areas of evidence, and incomplete material.

The Board was persuaded that natural areas along the Escarpment should be protected from the kind of development being proposed. One of the interesting aspects of this case, which may reflect a positive change in developers' attitudes, was that the proponent recognized the need to attempt to provide for environmentally sustainable development.

AVONDALE NORTH CLAY BORROW PIT PROPOSAL

An application was made by the Municipality of Metropolitan Toronto, pursuant to the CHA, seeking necessary approvals to allow it to open a clay pit – known as the Avondale North Clay Borrow Pit – in the Town of Vaughan. The pit was to be used as a source of liner and cover material for Metro's Keele Valley Landfill (KVL) site. In May 1990, after 40 days of hearing evidence, the Joint Board deferred the matter to another Joint Board, in accordance with the provisions of sections 5(3)(a) and 5(4)(a) of the CHA.

Evidence was heard in discrete phases: the proponent would introduce its testimony on a specific topic, followed by the evidence of the other parties on that topic. The topic of first-phase evidence was described as: "(1) Identification of Proponent's Objectives and (2) Soils". In effect, it dealt with the history of the KVL, the conditions attached to the Certificates of Approval for the KVL, and the quality and quantity of clay required to fulfil those conditions.

At the end of the first phase, two of the parties opposed presented motions asking the Joint Board to dismiss the applications because the proponent had not proven the need for clay from the Avondale North Clay Borrow Pit. Metro filed a counter-motion challenging the Joint Board's jurisdiction to dismiss the applications, on the grounds that the Joint Board had heard only the evidence presented in one phase of the hearing.

The Joint Board ruled that the motions for dismissal were appropriately before it and that it had the jurisdiction to deal with them. In response to the motions to dismiss the applications, the Joint Board found that the need for the undertaking was not proved in relation to soils, a topic identified as being dealt with in Phase I. It did, however, find that evidence regarding economic and environmental effects, to be heard in subsequent phases, might have a bearing on whether the proposed clay pit should be approved. Therefore, the Avondale North Clay Borrow Pit could not be ruled out as a source of clay at that time.

Although it did not dismiss the applications, on the ground that need for clay from the Avondale North pit had not been proven, the Board did find that the proponent had not prepared its case on the entire cover issue – one of the justifications for the need for the clay. In addition, the Board commented on the substantial changes that had been made to the applications since notice was given to the Hearings Registrar in January 1989.

In addition, the Joint Board referred to the uncertainties of the future of the KVL itself, which both Metro and the Region of York had proposed to expand. The York proposal had been endorsed by the Solid Waste Interim Steering Committee, comprising representatives of the five regional municipalities of the Greater Toronto Area and one from the Ministry of the Environment (MOE).

The Joint Board considered the merits of adjourning the hearing to a fixed date to allow the proponent to complete its applications regarding

the need for cover clay and the proposal for KVL expansion – issues that apparently could not be resolved for several months. In addition, the Joint Board commented that if the KVL expansion proceeded to a hearing, the Board might not be able to deal with the applications without starting from scratch with a new proponent, York Region, or with York Region as a co-proponent with Metro.

In considering an adjournment, the Joint Board found that a great deal of time in the 40 days of hearing evidence had been spent trying to verify MOE approvals of various design factors and on-extensive cross-examination on evidence that was introduced for the first time in oral evidence-in-chief. If the proponent had made appropriate documentation available before the beginning of the hearing, the time needed would have been considerably shorter.

Therefore, the Joint Board concluded that knowledge about the applications, accumulated over those 40 days, could be quickly assimilated by another Joint Board if the case were properly prepared and filed in advance.

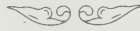
Its final conclusions were that the most equitable disposition of the applications would be to defer them to another Joint Board. In making that decision, the Joint Board attached two conditions:

1. the application could be renewed only when the proponent is in a position to file its application with complete supporting documentation; and
2. the application could be renewed only when the application by the Regional Municipality of York for an expansion of the Keele Valley Land-fill site has been submitted to the Ministry of the Environment or, alternatively, when York's proposal for an expansion to the Keele Valley Land-fill site has been abandoned.

The Joint Board issued a costs awards decision in this matter on 10 September 1990.

The proponent, the Municipality of Metropolitan Toronto, has applied for a judicial review of the Joint Board's decision.

ENVIRONMENTAL ASSESSMENT ACT AND LANDFILL SITE SEARCHES



MEAFORD

The Town of Meaford and the Township of St. Vincent brought an application to a Joint Board under the *Consolidated Hearings Act, 1981* for approval of a new municipal landfill. Following a lengthy hearing, the Board delivered its decision in December 1990, rejecting the proponents' environmental assessment because the site selection process was badly flawed.

In its decision, the Board discussed a number of environmental assessment issues, including:

- the need for a planning process under subsection 5(3) of the *Environmental Assessment Act*:

The Board held that a planning process is required, that it should have taken place prior to the selection of the preferred alternative and that, at the least, criteria should have been established for identifying and evaluating alternatives, and for assessing the relative importance of the criteria, in order to establish an evaluation framework.

- public participation in an environmental assessment:

The Board commented on the desirability of public participation, but did not find it necessary to decide whether such participation is an implied requirement of the Act.

- purpose of the undertaking:

The Board held that the purpose, as described, did not unduly restrict the range of alternatives and was therefore acceptable.

- site selection process:

The Board described the problems with the proponents' site selection process, especially with respect to establishing and applying criteria in identifying and evaluating alternative sites.

It held that the Act requires a proper site selection process, and that such a process helps ensure fairness and minimizes damage to the environment from the project.

The Board also commented on how uncertainties in technical evidence should be dealt with.

The decision is currently being appealed to Cabinet.



PUBLIC PARTICIPATION



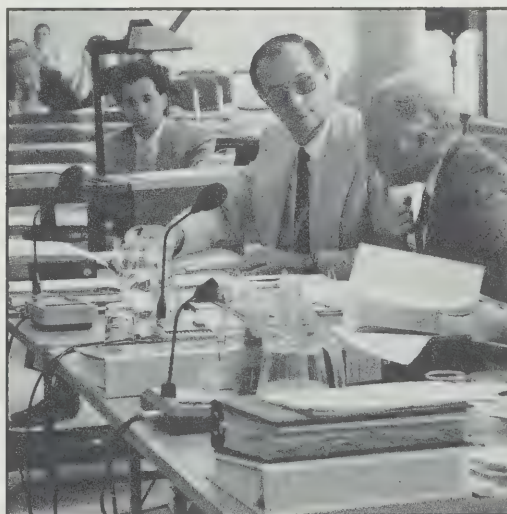
The Board is convinced that public participation is important to its operations and that those affected by its decisions should have the opportunity to participate in the process by which those decisions are made. As well, members of the public have information and perspectives that could assist the Board in making decisions.

Members of the public participate in hearings in different ways: as individuals or in groups; with or without legal representation; by making a straightforward submission to the Board or as a party to the hearing (in which case they have the right to request intervenor funding, to call and examine witnesses, and to make submissions to the Board).

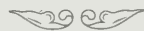
The Board's hearings usually include evening sessions, for those who cannot attend during the day, and the Board makes every effort to ensure that members of the public are treated courteously in a non-intimidating atmosphere.

The Board has prepared a memorandum, *Public Participation in the Hearing*, to help people who wish to be involved in hearings, in whatever role. At the same time, the Board expects members of the public to take advantage of the opportunities for public participation offered by the proponent; if people have concerns about aspects of the proponent's proposal, they should bring them to the proponent's attention promptly, rather than waiting for the hearing to raise concerns for the first time.

The Board expects that the proponent will provide opportunities for public participation and that, in its documentation and at the hearing, the proponent will tell the Board what it has done and how it has dealt with the concerns expressed by members of the public.



INTERVENOR FUNDING, SUPPLEMENTARY FUNDING, AND COSTS AWARDS



INTERVENOR FUNDING UPDATE

Intervenor funding is administered by the Board in accordance with the *Intervenor Funding Project Act, 1988* (IFPA), which was proclaimed on 1 April 1989.

The IFPA established a three-year pilot project to provide advance funding to eligible intervenors participating in hearings before the Environmental Assessment Board (EAB), Joint Boards (pursuant to the *Consolidated Hearings Act, 1981*) or the Ontario Energy Board. The IFPA expires on 1 April 1992.

Prior to the introduction of the IFPA, the Board administered intervenor funding programs established by Orders in Council on a case-by-case basis for EAB and Joint Board hearings. Some of these hearings are ongoing and the Board continues to administer funds related to them. Claims for funds pursuant to awards made under Orders in Council and the IFPA are now processed by the Financial and Capital Management Branch, Ministry of the Environment.

Since the IFPA was proclaimed, the Board has conducted intervenor funding programs under its requirements. The most intensive application of this new legislation was the intervenor funding program for the Ontario Hydro Demand/Supply Plan hearings before the EAB.

The funding panel for the Hydro hearings was appointed in April 1990. In anticipation of the magnitude and complexity of the issues that would arise in the hearings and the number of potential applicants for funding, it was decided that the program should be divided into two stages.

The purpose of Stage 1 was to:

- establish the eligibility of intervenors in accordance with the IFPA;
- provide preliminary funding to eligible parties to help them identify the issues they wished to address;
- assist eligible parties to negotiate among themselves to eliminate duplication;
- develop plans for their intervention; and
- assist eligible parties to attend preliminary hearings.

The purpose of Stage 2 was to provide financial assistance for preparing and participating in the hearing, according to the plan developed at the first stage.

There were 59 applicants for funding at Stage 1. After a hearing in early June 1990, the funding panel's decision identified 27 of these as being eligible for funding for the purposes of Stage 1.

In July, notice was given to the 27 successful applicants that the Stage 2 hearing would begin on 4 September 1990. It was also sent to intervenors who had been granted status by the Board subsequent to the Stage 1 decision.

This notice described the purposes of the second stage of hearings:

first, to determine whether additional funding should be provided to intervenors who had been found eligible at the first stage and, if so, to which applicants and in what amounts, based on plans and cost estimates developed in Stage 1; and

to determine whether funding should be provided to intervenors given status after the Stage 1 decision, and if so, to which applicants and in what amounts.

Hearings on those matters began in early September. In spite of their best efforts, it became clear that intervenors were not always prepared to allow the experts hired by other parties to examine issues about which they were concerned. Therefore, during the hearing parties were told that the funding panel's counsel would be instructed to set up meetings with certain groupings of intervenors. The purpose was to establish an informal setting where counsel could encourage frank discussions and negotiations among parties of similar interests (e.g., those interested in health effects; aboriginal groups worried about potential effects on traditional lifestyles and land and treaty rights and claims; public interest groups, etc.).

Over about five weeks, the parties succeeded in forming new coalitions on certain issues and making substantial reductions in their funding requests. In addition, they seemed to develop a better understanding of each other's roles at the hearing and, in many cases, created the foundation for working together and exchanging information. It is hoped that these working relationships will assist the parties and the Board during the main proceedings.

After a final round of submissions by the applicants and the proponent, the revised applications were re-evaluated by the funding panel and a decision was released on 14 December 1990, which allotted funding to 29 intervenors.

The intervenor funding process was complex. The intervenors were challenged to provide all the information required of them within a relatively short time. The panel also had to interpret and apply the eligibility requirements set out in the Act to parties representing a broad range of perspectives and interests in the multitude of issues surrounding Hydro's 25-year plan.

As a result of its experience with intervenor funding programs, the Board has recommended that the government amend the IFPA to:

- allow the Chair of the EAB to appoint more than one person to a panel deciding on funding for EAB hearings;
- allow the hearing panel to make preliminary decisions – before the intervenor funding program begins – on the hearing format and the issues to be addressed at the hearing;
- give the funding panel discretion to define eligible disbursements; and
- permit the Hearing Board to make rulings on jurisdiction, relevance, and procedural issues that arise during the funding process and are referred to it by the funding panel or by motions from the proponent or intervenors.

ONTARIO HYDRO DEMAND/SUPPLY PLAN SUPPLEMENTARY FUNDING DIRECTIONS

Prior to the presentation of evidence, the Hearing Board dealt with a number of issues related to supplementary funding, some of which were referred by the Funding Panel. In addressing them, the Board established a number of principles that will have general application in the future:

- The Board is not a granting agency for original research.
- The provision for supplementary funding in the *Intervenor Funding Project Act, 1988* [Section 12 (1)] does not provide for appeals against an original funding award decision.
- Normally, if a party is to receive supplementary funding, two criteria should be met: the party should be able to show a change in circumstances that renders the original funding inadequate, and, in general, the original funding award should have been exhausted before the supplementary application was made.

In order to further clarify conditions for supplementary funding, the Hearing Board has established a set of questions for any party seeking such funding. For example, has the applicant sought funding for the same items in the past or been refused either funding or a re-allocation of funding by the original Funding Panel?

COSTS AWARDS AND TRENDS

Costs awards made by the Environmental Assessment Board are important to parties who do not receive intervenor funding, or who require more financial assistance than was provided in the funding award they received.

Several decisions made during the past year may be a useful guide to members of the public who want to understand how the Board approaches costs awards. Some of those decisions follow, in the order in which they were released.

In the Enterac (Belfountain) case (CH-90-03), a Joint Board, on motion from opposing parties, dismissed, before the end of the hearing, applications for development permits and approval of a draft subdivision plan. The Board heard evidence from witnesses for the proponent for 18 days but dismissed the applications as premature and because there was insufficient evidence to justify continuing the hearing. No evidence was called by the opposing parties.

In a costs decision dated 28 August 1990, the Board considered the problem of assessing the contribution made by a party whose case was not required to proceed, but who had already made considerable preparation and incurred significant consultants' fees. It refused a request to adopt "the legalistic winner/loser approach to costs" and chose, instead, to consider ten factors, listed below, derived from previous Joint Board decisions it considered relevant to this case:

1. the characteristics of the proponent;
2. whether there was a clear, ascertainable interest

to be represented and a specific purpose for the assistance;

3. whether a party assisted and substantially contributed to the hearing;
4. whether there has been a better understanding of the issues because of the party's participation;
5. whether there is a need for financial assistance, and whether the party has other sources of funding and has tried and been unsuccessful in raising funds, and, if so, how much;
6. whether there was a clear and necessary purpose for spending the funds, and whether those expenditures were accounted for;
7. whether there was a co-ordinated effort to bring a number of interests together when they had similar concerns;
8. whether the party has established a record of concern and a demonstrated responsible commitment to that concern;
9. whether the parties co-operated with one another in retaining common experts for the purpose of giving evidence before the Board; and
10. whether the costs address an economic imbalance among the parties.

The Board ruled that public funding of the regional municipality, the town, and the conservation authority did not, in itself, make them ineligible for an award of costs. However, the Board did rule that, because "they were merely performing the normal duties placed upon them of defending their planning and environmental policies in the public interest", no award should be made, although the Board did consider their presence at the hearing necessary and expected. Moreover, the Board was critical of the way they rushed to get the hearing under way, when more time was needed for consultation and negotiation.

The Board was concerned that, although the Ministry of Natural Resources and the Ministry of the Environment were also parties in this matter, they did not inform the proponent of their concerns

much earlier in the process. Had they done so, the proponent might have been able to answer them.

The Board observed that no party asked for more time to prepare or for an adjournment and that the proponent "was not properly or adequately prepared". It seemed that "everyone wanted to charge along".

The Board made an award to the local ratepayers' group, although it disallowed printing and fund-raising expenses and the cost of preparatory work done by a consultant who could not attend the hearing, as well as the fees for work done by a consultant "prior to the indication of a Joint Board being established". It also deducted the amount the group had been able to raise outside of the hearing. A further deduction was made equal to the costs incurred for work that would be of benefit to the ratepayers' group in a related by-law hearing before the Ontario Municipal Board members of the same Joint Board panel.

At the end of the first phase of the Avondale North Clay Borrow Pit application (CH-89-01), a phased hearing before a Joint Board, opposing parties brought motions to end the hearing. The Board decided that, because the proponent was premature in making the application and unprepared to substantiate it, it would defer the proponent's applications to another Joint Board.

The Board ordered that half the fees of the opposing parties' consultants, who were not called to give evidence because of that decision, be paid by the proponent. In considering claims for the legal fees of the claimants, the Board based awards "on the extent and focus of each party's interest, the contribution made by counsel in the hearing, and an estimation of the likely participation and contribution if the hearing had continued".

Claims for legal and witness fees made by the Town of Vaughan, which was an opposing party, were reduced by 20 per cent because it had wasted some time and incurred expenses pursuing certain

allegations it was unable to prove. Another party was awarded only 50 per cent of its legal fees because the Board felt its participation in all aspects of the first phase of hearings was unnecessary. Several other parties, not actively involved in the hearing, were awarded only 20 per cent of their legal fees and a further deduction was made for all legal fees related to "time spent in contacting government agencies and individuals in an attempt to procure intervenor funding or to the incorporation of one of the groups".

In its procedural directions, the Board usually includes lists of some factors it will take into account when it is considering whether to award costs to or against parties. Although the lists may vary from case to case, they usually reflect most or all of the factors found in the report of the Enterac decision.

However, there were two additional elements taken into account in the procedural directions issued by the Board on 26 October 1990, in the Kenora landfill expansion application (EP-90-02). These factors, which were originally adopted in the OWMC matter, are:

- (viii) a party disputed a fact, issue or expert opinion when it was unreasonable to have done so;
- (ix) a party's conduct tended to shorten or unnecessarily lengthen the duration of the hearing.

In the draft procedural directions issued by a Joint Board in November 1990 in respect of the Durham landfill application (CH-90-09), the list of factors also included whether:

- a party filed all documents within the time limits imposed elsewhere in the procedural directions;
- a party filed documents as far in advance of those time limits as was reasonably possible;
- a party's conduct tended to delay the hearing; and
- there was duplication of testimony, documentary evidence, and submissions.

By clarifying that these are factors in its decisions, the Board is cautioning parties – before evidence is even heard – that pre-hearing procedural steps must be taken in as efficient a manner as possible, and that the hearing must be conducted in the same way. It is the hope of members of the Board that, by explaining its reasons for costs decisions, parties will recognize the Board's expectations.

In the Kam case (EA-89-01), which involved an environmental assessment of a proposed hydro-electric generating facility, costs were claimed after several motions had been argued prior to evidence being heard. In its ruling, issued 22 February 1991, the Board decided not to award costs because it is not its general practice to do so in regard to interlocutory proceedings. However, the Board warned that it might award such costs "in the future with respect to this hearing".

On 20 March 1991, the Board, in dealing with proceedings of the Ontario Hydro Demand/Supply Plan (EA-90-01), issued a document, *Cost Guidelines*, to assist the parties before evidence was heard. These are the most extensive directives on costs released by a panel of the EAB to date.

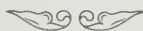
The Hydro hearings are expected to be lengthy and the guidelines may not necessarily apply to other hearings. As they make clear, they are not intended to limit the general discretion of the Board with respect to costs, and they may be amended by the Board from time to time, as it deems necessary. The following are the key aspects of the guidelines:

- parties who contribute in a responsible manner can expect to be awarded full costs;
- participation that strikes the Board as negative in intent – because it is frivolous, vexatious or wholly without merit – will usually result in costs being reduced or denied and could lead to an order that the party pay costs to other parties;
- costs consist of reasonable amounts directly and necessarily incurred in relation to the preparation and presentation of material by a party, and

can include employees' remuneration (including payment for employees who perform legal, expert, professional consulting, and case management services), travel and related expenses, transcription, photocopying, facsimile, and delivery costs, and other assessable disbursements;

- costs will not include expenditures that were applied for and not granted by the intervenor funding panel, unless leave was granted to include such expenditures;
- all claims require receipts, a detailed account of expenditures, and verification by sworn affidavit;
- there are limits to allowable costs of legal services;
- the costs of interlocutory motions will generally be included in the costs of the hearing;
- costs may be denied when a motion, or a part thereof, was unsuccessful, and it is the Board's opinion that such motion was not necessary, should not have been brought or had no likelihood of success;
- interim costs for expenditures incurred and paid out before the end of the hearing may be awarded at certain stages in the hearing, up to a maximum of 80 per cent of the maximum permitted amount;
- application for interim costs may be made earlier if the party would otherwise face hardship significant enough to make it impossible to continue participating in the hearing;
- interim costs are part of any final award of costs, but are not repaid to the Board if the final award is less than the interim costs already awarded and paid out;
- a responsible contribution does not require that the Board accept any party's position, as long as the contribution assisted the Board in understanding and reaching a decision on the issues;
- when awarding costs, no distinction is made between parties with a public interest and those with a private interest.

THE NIAGARA ESCARPMENT AND THE BOARD



Under the authority of the *Consolidated Hearings Act, 1981* (CHA), the Board has become increasingly involved in the past two years in hearings related to the Niagara Escarpment Plan. Under the CHA, a proponent whose proposal requires hearings by more than one tribunal may request a hearing by a Joint Board, "composed of one or more members of either or both of the Environmental Assessment Board and the Ontario Municipal Board" (Section 4 (4)). The *Niagara Escarpment Planning and Development Act* (NEPDA) is one of the 12 acts under which consolidated hearings may be held.

Using this legislation, Board members serving as members of Joint Boards have participated in hearings on a broad array of private-sector undertakings. These typically involve subdivisions and consents under the *Planning Act, 1983*, or development permits under the NEPDA. As indicated in the Index of Hearings later in this report, these hearings varied from appeals: some related to one or two residential lots and buildings in the Minor Urban Centre designation of the Niagara Escarpment Plan (NEP) on the west shore of Eugenia Lake, and one was in regard to a large residential proposal, straddling "Escarpment Natural", "Protection", and "Rural" designations close to the brow of the Credit River Valley in the village of Belfountain.

Cumulatively, decisions on these small and large undertakings may have a considerable impact on the quality of the Escarpment environment.

In June 1990, the Ministry of the Environment assumed responsibility for the NEPDA. In the Ministry's ensuing assessment of roles and responsibilities, Niagara Escarpment Hearing Officers John Duncanson and John McClellan were cross-appointed as members of the Environmental Assessment Board, effective 1 January 1991. Their new roles will involve conducting hearings as part of Joint Boards, on appeals related to development permits for undertakings in the Niagara Escarpment Plan area or to amendments to the Plan.

Late in 1990, the first periodic five-year review of the NEP was completed, according to a requirement of the NEPDA (Section 17), marking a new phase in planning for the Niagara Escarpment. By participating in the public hearings panel on the revised Plan, the Board will play some part in that evolution. Hearings are scheduled for the fall of 1991.

Mrs. Norma Geniole, the Administrative Officer for the operations of the Hearing Officers, will continue to be located in the Board's offices.

INDEX OF DECISIONS



ENVIRONMENTAL PROTECTION ACT

EP-89-03 APPLICANT:

EnSCO, Inc.

The project was a Class I mobile PCB destruction facility waste management system for use at a waste disposal site in Smithville Industrial Park, Township of West Lincoln, Regional Municipality of Niagara.

ISSUE:

The use of a mobile facility, for a limited time period, to destroy PCBs and decontaminate soils at a waste disposal storage site.

DECISION:

The application for Certificates of Approval was approved for:

- 1) a Class I mobile PCB destruction facility waste management system (technology);
- 2) the use of the Class I mobile PCB destruction facility at the waste disposal site located in Smithville Industrial Park, to allow decontamination of the Chemical Waste Management Limited (CWML) storage site currently owned and managed by the Ministry of the Environment at that location.

In conjunction with these approvals, the Board directed the Director, Approvals Branch, of the Ministry of the Environment, to issue the Site and System Certificates of Approval in accordance with a set of detailed site and system conditions and subject to a set of undertakings by the Ministry of the Environment.

The application of West Lincoln Township's prevailing zoning by-law to the facility was suspended while the facility is in operation.

RELEASE DATE:

Decision: 11 May 1990

Reasons for Decision: 12 July 1990

EP-89-04 APPLICANT:

Steetley Quarry Products Inc.

An application was made to amend the applicant's Provisional Certificate of Approval, dated 5 April 1978, for a waste disposal site in the Township of Flamborough, Regional Municipality of Hamilton-Wentworth. This involved expanding the service area of the site to include more customers, and altering the final contours of the site "from one with four mounds to one with a single, more gently sloping mound", without any expansion of the approved capacity of the site.

ISSUE:

Whether the proposal to alter the final contours would result in an expansion of the approved capacity of the waste disposal site.

INDEX OF DECISIONS

DECISION: The hearing was adjourned indefinitely pending an amendment of the proponent's application, and a revised referral from the Director of Approvals as a result of the Board's findings that the approved capacity of the waste disposal site would be increased by 50 per cent.

RELEASE DATE: 26 July 1990

Subsequent to the decision, the proponent amended its application with respect to capacity increase, but the Director has not referred the revised application to the Board for hearing.

CONSOLIDATED HEARINGS ACT, 1981

CH-87-03 APPLICANT: North Simcoe Waste Management Association

Appeal to Cabinet from a decision of a Joint Board, released in November 1989, denying the application for approval of a new municipal landfill. The Joint Board had refused to accept the proponent's environmental assessment because of deficiencies in the planning and site selection process. The proponent appealed to Cabinet.

DECISION OF THE CABINET: Cabinet substituted its decision for that of the Joint Board. It ordered the proponent to carry out further investigations of sites comparable to the one selected and asked the Board to reconsider the weight to be accorded to the agricultural lands component of the comparative analysis. Depending on the outcome of the new investigations, the selected site or a new one will be brought forward for approval.

RELEASE DATE: 14 June 1990

To date, no application has been made by the proponent pursuant to Cabinet's decision.

CH-89-01 APPLICANT: Municipality of Metropolitan Toronto

A proposal by the Municipality of Metropolitan Toronto to acquire property in the Town of Vaughan where clay will be extracted for use as liner and cover material at the nearby Keele Valley Landfill Site.

ISSUE: The main issue was whether the proposed clay pit should be approved.

DECISION: The application was deferred after more than 40 hearing days because it was premature and the proponent was unprepared. Costs were awarded against Metro to defray a portion of the hearing-related expenses of the Town of Vaughan, Rizmi Holdings Ltd., Northdale Investments Inc., and a local community coalition.

RELEASE DATE: Reasons for Decision: 4 May 1990
Decision and Reasons for Costs: 10 September 1990
Order for Costs: 4 October 1990

An Application for Judicial Review was filed by the proponent, Metropolitan Toronto, on 14 December 1990.

INDEX OF DECISIONS

CH-89-04 APPLICANT:

Tom Valstar

The Town of Niagara-on-the-Lake appealed a decision of the Regional Land Division Committee granting consent for Tom Valstar to convey property from himself to his company, Scott Street Greenhouses Ltd. An ancillary request for a development permit, for a walkway connecting two greenhouses on the subject lands, was referred to the Joint Board by the Niagara Escarpment Commission.

ISSUE:

The main issue was whether the Niagara Escarpment Plan allowed a commercial greenhouse operation near residential areas.

DECISION:

The Joint Board dismissed the appeal and granted the development permit subject to conditions.

RELEASE DATE:

29 June 1990

CH-89-05 APPLICANT:

LAC Minerals Ltd.

A proposal to expand an existing limestone quarry on the Niagara Escarpment in the Town of Milton.

WITHDRAWN:

31 May 1990

CH-89-07 APPLICANT:

Doriano Poloni

APPEALS:

Two appeals: the Niagara Escarpment Commission appealed the Regional Municipality of Halton Land Division Committee decision granting the applicant consent to sever the subject property. The Niagara Escarpment Commission (NEC) refused to grant a development permit for the subject property and the applicant appealed this decision.

ISSUE:

The main issue was whether the applications conformed with the Niagara Escarpment Plan and the Halton Official Plan.

DECISION:

The Joint Board was satisfied that the subject applications for severance and development conformed with the Niagara Escarpment Plan and the Regional Official Plan. The Appeal by the NEC was dismissed and the Board ruled that a development permit should be issued subject to the conditions proposed by the NEC.

RELEASE DATE:

Decision and Reasons: 12 June 1990

CH-89-10 APPLICANT:

Ann Andreychuk

There were two appeals: the first by the Niagara Escarpment Commission from a decision of the Regional Municipality of Niagara Land Division Committee granting an application for severance. The other was an appeal by the applicant from a decision of the Niagara Escarpment Commission denying an application for a development permit for a single-family dwelling.

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The subject site, a parcel of .405 hectares (one acre) in the Town of Grimsby, is in the Niagara Escarpment Protection Area of the Niagara Escarpment Plan.

ISSUE: The issue was entitlement to a "bona fide farmer" retirement lot, under the provisions of the Niagara Escarpment Plan and the Region of Niagara Official Plan.

DECISION: The appeal by the Niagara Escarpment Commission was dismissed and the consent was granted, subject to Section 52 (18) of the *Planning Act* (which deals with conditions imposed by the municipal council); the application for a development permit was also granted, subject to Niagara Escarpment Commission site development conditions.

RELEASE DATE: 9 July 1990

APPEAL: The Niagara Escarpment Commission appealed to Cabinet on 1 August 1990. On 6 February 1991, Cabinet ordered that the Joint Board decision be rescinded and the land severance and development permit applications be denied.

CH-90-01 APPLICANTS:

Reinhold and Brunhilde Wechsel

This matter included two appeals: the first was by the applicants from a decision of the Township of Mono Committee of Adjustment denying an application for consent to convey a .81-hectare (two-acre) parcel from a 20.2-hectare (50-acre) lot in Mono Township. The second appeal was by Karin Blouman, Wallace Barr, Lynne Suq, and Clive Cockerton from a decision of the Niagara Escarpment Commission approving an application for a development permit for a single-family dwelling on the subject site.

ISSUE: The site is in the Escarpment Protection Area of the Niagara Escarpment Plan. The main issue was whether the permit conformed to the New Lot provisions and Development Criteria of the Niagara Escarpment Plan, as well as to the subdivision requirements of the Planning Act.

DECISION: The Wechsel appeal of the consent refusal was dismissed and consent denied. The development permit approval was thereby rendered void.

RELEASE DATE: Oral Decision: 14 August 1990
Written Decision and Reasons for Decision: 22 October 1990

APPEAL: The Wechsels appealed to Cabinet on 11 September 1990.
A decision is pending.

CH-90-02 APPLICANTS:

John Stark, Christine Stark, and Marilyn Gordon

This involved an appeal by the applicants from a decision of the County of Grey Planning Approval Committee dismissing an application to sever a .48-hectare (1.2-acre) site in the Township of Artemesia. Related to that, John Stark appealed the decision of the Niagara Escarpment Commission refusing to issue two development permits for dwellings on the two lots that would be created by the severance.

ISSUE:

The subject lots are in the Escarpment Recreation Area of the Niagara Escarpment Plan. The main issue was development conditions on lots designated as permitting residential uses.

DECISION:

Both appeals were allowed, and the Board granted the requested severance and development permits, subject to conditions related to the special features of the sites, which are near the brow of the Escarpment overlooking Beaver Valley. The conditions of the severance included arrangements for satisfactory wells, while the conditions for the development permits require detailed site- and tree-preservation plans.

RELEASE DATE:

28 January 1991

CH-90-03 APPLICANT:

272944 Ontario Limited and 272139 Ontario Limited, generally known as Enterac

There were two related matters before the Board: the first an application for approval of a draft plan to develop a subdivision containing 73 residential lots on a 70.9-hectare (175.2-acre) parcel in the Village of Belfountain, Town of Caledon, and the second an appeal by the proponent of the Niagara Escarpment Commission's refusal to issue development permits for the residential units and related land development and utilities.

The subject site is identified as part of a Minor Urban Centre in the Niagara Escarpment Plan and is "covered by the Escarpment Natural, Escarpment Protection, and Escarpment Rural designation of the Plan". The land is a wooded terrace close to the brow of the Credit River valley.

Early in the hearing, when the proponent's case had been completed, lawyers for the Caledon Ratepayers' Association – supported by the Niagara Escarpment Commission, the Credit River Valley Conservation Authority, and the Region of Peel – brought a motion asking the Board to refuse to approve, under provisions of the *Planning Act*, the application for the draft subdivision plan and to refuse the application for development permits under the *Niagara Escarpment Planning and Development Act*.

The Board also heard motions for costs on behalf of the Corporation of the Town of Caledon, the Caledon Ratepayers' Association, the Credit River Valley Conservation Authority, and the Regional Municipality of Peel.

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- ISSUE:** The main issue was whether the density and design of the 73-lot subdivision were in conflict with the objectives and policies of the Niagara Escarpment Plan and the Town of Caledon Official Plan and local planning policies.
- DECISION:** The joint motion was granted, thus refusing approval of the draft plan of subdivision and confirming the Niagara Escarpment Commission's refusal to issue development permits.
- Only the Caledon Ratepayers' Association was found eligible for costs, and was awarded \$33,069.24.
- RELEASE DATE:** 28 August 1990
- APPEAL:** Enterac appealed to Cabinet on 24 September 1990.
A decision is pending.
- CH-90-04 APPLICANT:** Cyril Zovko and Alfio Pilutti.
- Appeals from the decisions of the Halton Regional Land Division Committee and the Niagara Escarpment Commission denying severance applications and development permits.
- ISSUE:** Rural Cluster designation and delineation, the cumulative impact of the proposal on the environment, the degree to which local and regional official plans conform to the Niagara Escarpment Plan (NEP).
- DECISION:** The Joint Board concluded that continued development by consent, in the absence of an approved local plan that conforms with the NEP, could result in cumulative environmental and visual damage to the Niagara Escarpment. The appeals were denied.
- RELEASE DATE:** Decision and Reasons: 27 February 1991
- APPEAL:** Appeal to Cabinet March 1991.
A decision is pending.
- CH-90-05 APPLICANT:** Douglas Harvey
- Two matters were under consideration: first, an appeal by the Niagara Escarpment Commission from a decision of the Regional Municipality of Hamilton-Wentworth Land Division Committee conditionally granting Douglas Harvey's application for a severance; and, second, an application for an amendment to the Parkway Belt West Plan to change the designation of the subject area from a Special Complementary Use Area to a General Complementary Use Area.
- The consent sought was for a parcel of slightly less than .405 hectares (one acre) in the Town of Flamborough.
- ISSUE:** The main issue was whether the subject area of the Parkway Belt West is suitable for residential development.

INDEX OF DECISIONS

DECISION: The request for a change in the designation in the Parkway Belt West was refused; the application for the consent was dismissed; and the appeal against the consent, made by the Niagara Escarpment Commission under provisions of the Planning Act, was allowed.

RELEASE DATE: 27 March 1991

APPEAL: The applicant appealed to Cabinet on 25 April 1991.
A decision is pending.

CH-90-07 APPLICANT: Obod Sale Inc.

The matter comprised two appeals, the first of which was by the Niagara Escarpment Commission and William and Elizabeth Nemerson from a decision of the County of Grey Planning Approval Committee granting an application, with conditions, to sever a .31-hectare (.77-acre) residential lot on the west shore of Eugenia Lake. The second was from a decision of the Niagara Escarpment Commission to refuse Obod Sale Inc. an application for a development permit to allow construction of a single-family dwelling.

The subject lot is in the Minor Urban Centre designation of the Niagara Escarpment Plan.

ISSUE: The main issue was conformance with the Development Criteria of the Niagara Escarpment Plan as they apply to a Minor Urban Centre, and the provisions of the Beaver Valley Official Plan with respect to development in a "village residential" area.

DECISION: The appeal by the Niagara Escarpment Commission and William and Elizabeth Nemerson against the consent granted by the County of Grey Planning Approval Committee was allowed. The appeal of Obod Sale Inc. against the Niagara Escarpment Commission's refusal to grant a development permit was dismissed.

RELEASE DATE: 28 January 1991

APPEAL: The applicant appealed to Cabinet on 22 February 1991.
A decision is pending.

INTERVENOR FUNDING PROJECT ACT, 1988

As noted previously, intervenor funding is administered by the Board in accordance with the *Intervenor Funding Project Act, 1988*.

EP-89-04(F) FUNDING PROPONENT: Steetley Quarry Products Inc.

INTERVENORS: Town of Flamborough;
Corporation of the Town of Dundas;
Greensville Against Serious Pollution (GASP);
Corporation of St. Paul's Parish of Westdale and Cootes Paradise

INDEX OF DECISIONS

The parties made applications for funding to support their participation in a hearing under the *Environmental Protection Act*. The hearing arose from the application by the funding proponent for approval to amend a Provisional Certificate of Approval for a Waste Disposal Site in the Town of Flamborough.

ISSUE: Eligibility for funding of intervenors concerned with an amendment to a Provisional Certificate of Approval for a waste disposal site.

DECISION: Three of the intervenors were found eligible for funding.

The Town of Flamborough was awarded \$30,995 for legal and transcript costs, and for the costs of obtaining expert advice on transportation, design and engineering, and hydrogeological issues.

Greenville Against Serious Pollution received an allocation of \$15,400 for legal costs and transcript costs.

The \$13,700 award to the Town of Dundas was for the services of a toxic chemical specialist.

Funds were not allocated to St. Paul's Parish of Westdale and Cootes Paradise because its concerns were so similar to those of GASP and, to some extent, those of the municipalities.

RELEASE DATE: 2 April 1991

At the outset of the hearing on 15 May 1990, Greenville applied to the hearing panel for supplementary funding but this application was dismissed.

EP-90-02(F) FUNDING PROPONENT: Corporation of the Town of Kenora

INTERVENORS: KHP (Kirkup, Haycock, Pettypiece) Property Owners Association, the Black Sturgeon Lake Association, and Brian Heppelle

An application was made by the KHP Property Owners Association for funding to support its participation in a hearing under the *Environmental Protection Act*. The hearing arose from the application by the funding proponent for a Provisional Certificate of Approval to permit interim expansion, operation, and closure of the existing Tri-Municipal Landfill Site in the unincorporated Township of Haycock in the District of Kenora.

ISSUE: Eligibility for funding and funding allocation for an intervenor concerned with an application by the Town of Kenora to permit expansion of an existing landfill site.

DECISION: KHP Property Owners Association, as an intervenor eligible for funding, was awarded \$40,470 for legal costs and for the costs of obtaining hydrogeological expertise. The amount was determined by agreement between the funding proponent and the intervenor.

RELEASE DATE: 29 November 1990

INDEX OF DECISIONS

EA-89-01(F) FUNDING PROPONENT: Kam Power Corporation

Several parties requested intervenor funding to help them participate in the environmental assessment hearing examining Kam Power Corporation's proposal to construct a hydro-electric generating dam on the Kam River west of Thunder Bay.

ISSUE: Application of the IFPA to a small private enterprise.

DECISION: Friends of the Kam, a coalition of interested parties representing white water recreationists, other outdoor recreation interests, and local residents, was allocated \$21,669.50.

RELEASE DATE: 29 November 1990

EA-90-01(F) FUNDING PROPONENT: Ontario Hydro

Funding was requested to enable intervenors to participate in an Environmental Assessment Board hearing examining Ontario Hydro's plan for supplying Ontario's electricity demands for the next 25 years.

ISSUES: Procedures and criteria for evaluating intervenor funding applications in multi-intervenor hearings.

DECISIONS: Stage 1: 59 parties requested intervenor funding. The funding panel considered applications totalling more than \$15 million, identified 27 intervenors who were eligible for funding, and allocated approximately \$1.7 million. The Stage 1 decision included the panel's comprehensive interpretation of the eligibility requirements of the *Intervenor Funding Project Act, 1988*.

Stage 2: 39 applications were filed at this stage, requesting a total of more than \$60 million. The funding panel identified 29 intervenors eligible for Stage 2 funding and allocated more than \$21 million.

Appeal to the Ontario Court of Justice and Application for Judicial Review of the Stage 1 decision regarding the Native Council of Canada's (NCC) Application for Intervenor Funding: the application for Judicial Review was dismissed and the funding panel was directed to provide an opportunity for the NCC to make submissions in response to a supplementary application made by the Ontario Metis and Aboriginal Association. Following a hearing of the NCC's submissions, funding was again denied because of a significant overlap between the interests represented by the NCC and those represented by other groups.

RELEASE DATE: Decisions and Reasons:
Stage 1 - 27 June 1990
Stage 2 - 14 December 1990
NCC - 6 December 1990

QUESTION

Application de la Loi sur le projet d'aide financière aux intervenants à une petite entreprise privée.

DÉCISION

Friends of the Kam, une coalition regroupant des professionnels des loisirs en eau vive, d'autres groupes intéressés aux activités de plein air et des résidents, a reçu 21 669,50 \$.

DATE

Le 29 novembre 1990

EA-90-01 (F) PROPOSANT TENU
DE VERSER UNE AIDE FINANCIÈRE

Ontario Hydro

Les intervenants ont demandé de l'aide financière pour participer à une audience de la Commission des évaluations environnementales portant sur le plan d'Ontario Hydro visant à approvisionner l'Ontario en électricité au cours des 25 prochaines années.

QUESTIONS

Les procédures et les critères d'évaluation des demandes d'aide financière des intervenants au cours des audiences faisant appel à plusieurs intervenants.

DÉCISIONS

Première étape :

59 parties ont demandé de l'aide financière aux intervenants. Le comité d'aide financière a examiné des demandes totalisant 15 millions de dollars, jugé que 27 intervenants étaient admissibles à l'aide financière et alloué environ 1,7 million. La décision tenait compte de l'interprétation globale des critères d'admissibilité de la Loi de 1988 sur le projet d'aide financière aux intervenants.

Deuxième étape :

39 demandes ont été reçues, totalisant 60 millions de dollars. Le comité d'aide financière a jugé que 29 intervenants étaient admissibles à de l'aide financière dans le cadre de la deuxième étape et a alloué plus de 21 millions de dollars.

Appel porté devant la Cour de justice de l'Ontario et demande de révision judiciaire de la décision de la première étape concernant la demande d'aide financière aux intervenants présentée par le Conseil des autochtones du Canada : la demande de révision judiciaire a été rejetée et le comité d'aide financière a été chargé de fournir une occasion au Conseil des autochtones du Canada de faire des présentations en réponse à une demande de fonds supplémentaires présentée par la Ontario Metis and Aboriginal Association. À la suite d'une audience consacrée aux présentations du Conseil des autochtones du Canada, le financement a une fois de plus été refusé en raison des similitudes importantes entre les intérêts représentés par le Conseil des autochtones du Canada et ceux des autres groupes.

DATE

Décisions et motifs :

Première étape – le 27 juin 1990
Deuxième étape – le 14 décembre 1990
CAC – le 6 décembre 1990

QUESTION : Admissibilité à l'aide financière des intervenants touchés par la modification d'un certificat d'autorisation provisoire visant une décharge.

DÉCISION : Trois des intervenants ont été jugés admissibles à l'aide financière.

La ville de Flamborough a reçu 30 995 \$ pour ses frais de justice et ses frais de transcription, de même que pour ses frais de consultation en matière de transport, de conception, de génie et de questions hydrologiques.

Greensville Against Serious Pollution a reçu 15 400 \$ pour ses frais de justice et ses frais de transcription.

Une somme de 13 700 \$ a été versée à la ville de Dundas pour payer les services d'un spécialiste des produits chimiques toxiques.

St. Paul's Parish of Westdale and Coates Paradise n'a pas reçu d'aide financière parce que ses préoccupations étaient semblables à celles du CASP et, dans une certaine mesure, à celles des municipalités.

Le 2 avril 1991

À l'issue de l'audience, le 15 mai 1990, Greensville a présenté une demande de fonds supplémentaires au comité d'audience, mais cette demande a été rejetée.

EP-90-02 (F) PROPOSANT TENU DE VERSER UNE AIDE FINANCIÈRE : Ville de Kenora

INTERVENANTS : KHP (Kirkup, Haycock, Pettyplace) Property Owners Association, la Black Sturgeon Lake Association et Brian Heppelle

La KHP Property Owners Association a demandé de l'aide financière pour sa participation à une audience en vertu de la Loi sur la protection de l'environnement. L'audience a été tenue à la suite de la demande du proposant, qui désirait obtenir un certificat d'autorisation provisoire pour agrandir temporairement, exploiter et fermer une décharge commune à trois municipalités dans le canton non érigé en municipalité de Haycock, dans le district de Kenora.

QUESTION : Admissibilité à l'aide financière et financement pour un intervenant préoccupé par une demande de la ville de Kenora visant à autoriser l'agrandissement d'une décharge existante.

DÉCISION : La KHP Property Owners Association, à titre d'intervenant admissible à l'aide financière, a reçu 40 470 \$ pour couvrir ses frais de justice et les honoraires d'un expert en hydrogéologie. La somme a fait l'objet d'une entente entre le proposant et l'intervenant.

DATE : Le 29 novembre 1990

EA-89-01 (F) PROPOSANT TENU DE VERSER UNE AIDE FINANCIÈRE : Kam Power Corporation

Plusieurs parties ont demandé de l'aide financière aux intervenants dans le cadre de l'audience qui avait pour but d'examiner une proposition de la Kam Power Corporation. Cette proposition visait la construction d'un barrage hydro-électrique sur la rivière Kam à l'ouest de Thunder Bay.

DÉCISION :	La demande de modification de la désignation du secteur de la ceinture ouest des proménades a été rejetée, la demande de consentement a été rejetée, l'appel interjeté par la Commission de l'escarpement du Niagara en vertu des dispositions de la Loi sur l'aménagement du territoire a été accordé.	DATE :	Le 27 mars 1991.	APPEL :	Le requérant a interjeté appel auprès du Cabinet le 25 avril 1991.	CH-90-07	REQUÉRANT :	Obod Sale Inc.
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QUESTION :	Il s'agissait principalement d'évaluer la conformité de la proposition avec les critères d'aménagement qui s'appliquent à un petit centre urbain et avec les dispositions du Plan officiel de Beaver Valley concernant l'aménagement d'une zone désignée «village résidentiel».	DÉCISION :	L'appel interjeté par la Commission de l'escarpement du Niagara et par William et Elizabeth Nemerson a été reçu. L'appel interjeté par Obod Sale Inc. a été rejeté.	DATE :	Le 28 janvier 1991	APPELS :	Le requérant a interjeté appel auprès du Cabinet le 22 février 1991.
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LOI DE 1988 SUR LE PROJET D'AIDE FINANCIÈRE AUX INTERVENANTS Comme on l'a indiqué précédemment, l'aide financière aux intervenants est administrée par la Commission, conformément à la Loi de 1988 sur le projet d'aide financière aux intervenants.

EP-89-04 (F) PROPOSANT TENU

DE VERSER UNE AIDE FINANCIÈRE : Steelley Quarry Products Inc.

INTERVENANTS :

Ville de Flamborough

Ville de Dundas

Greensville Against Serious Pollution (GASP)

Corporation of St. Paul's Parish of Westdale and Coates Paradise

Les parties ont fait une demande d'aide financière pour appuyer leur

participation à l'audience, en vertu de la Loi sur la protection de l'environnement. L'audience a été tenue à la suite de la demande du proposant de modifier le certificat d'autorisation provisoire d'une décharge dans la ville de

Flamborough.

QUESTION :	La question était de savoir si la densité et la conception du lotissement du terrain en 73 lots étaient en conflit avec les objectifs et les politiques du Plan de l'escarpement du Niagara et du Plan officiel de la ville de Caledon et avec les politiques locales d'aménagement.	DÉCISION :	La motion conjointe a été acceptée. L'ébauche de plan de lotissement a été rejetée et le refus de la Commission de l'escarpement du Niagara d'émettre des permis d'aménagement a été confirmé.	Seule la <i>Caledon Ratepayers' Association</i> a été reconnue admissible au remboursement de ses frais et a reçu à ce titre 33 069,24 \$.	Le 28 août 1990	APPEL :	Entrac a interjeté appel auprès du Cabinet le 24 septembre 1990. On attend la décision.	Cyril Zovko et Alfio Pilutti	On a interjeté appel des décisions du comité de morcellement des terres de la municipalité régionale de Halton et de la Commission de l'escarpement du Niagara qui avaient refusé leur consentement aux demandes de morcellement et de permis d'aménagement.	La désignation et la délimitation d'enclave rurale, l'effet cumulatif de la proposition sur l'environnement, la mesure dans laquelle les plans officiels local et régional sont conformes au Plan de l'escarpement du Niagara.	La commission mixte a conclu que consentir au lotissement continu, en l'absence d'un plan local autorisé conforme au Plan de l'escarpement du Niagara, pourrait endommager l'escarpement du Niagara sur les plans esthétique et environnemental. Les appels ont été rejetés.	Décisions et motifs : le 27 février 1991	APPEL :	Appel interjeté auprès du Cabinet en mars 1991. On attend la décision.	Douglas Harvey	Deux affaires étaient à l'étude : un appel interjeté par la Commission de l'escarpement du Niagara de la décision du comité de morcellement des terres de la municipalité régionale de Hamilton-Wentworth, qui avait accepté, sous réserve de certaines conditions, la demande de morcellement de terrain présentée par Douglas Harvey et une demande de modification du plan de la ceinture ouest des promenades visant à faire passer la désignation du secteur en question de secteur d'utilisation complémentaire spéciale à secteur d'utilisation complémentaire générale.	Le consentement demandé visait une parcelle d'un peu moins de 0,405 hectare (un acre) dans la ville de Flamborough.	Il s'agissait de savoir si le secteur de la ceinture ouest des promenades convenait à l'aménagement résidentiel.	QUESTION :
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CH-90-02 RÉQUÉRANTS :

John Stark, Christine Stark et Marilyn Gordon

Les requérants ont interjeté appel d'une décision du comité de planification du comté de Grey, qui rejetait une demande visant le lotissement de 0,48 hectare (1,2 acre) dans le canton d'Artemesia. John Stark a interjeté appel de la décision de la Commission de l'escarpement du Niagara, qui a refusé d'émettre deux permis d'aménagement pour les habitations qui auraient été construites sur les deux lots créés par le morcellement du terrain.

QUESTION :

Les lots étaient situés dans la zone de l'escarpement réservée aux loisirs, conformément au Plan de l'escarpement du Niagara. Il s'agissait de déterminer les conditions d'aménagement des lots où les utilisations résidentielles sont autorisées.

DÉCISION :

Deux appels ont été reçus, et la Commission a accordé les permis de lotissement et d'aménagement sous réserve des conditions liées aux caractéristiques particulières des emplacements, qui sont situés près du sommet de l'escarpement qui surplombe Beaver Valley. Les conditions applicables au lotissement portent notamment sur les puits, tandis que les conditions s'appliquant aux permis d'aménagement exigent la préparation de plans de conservation détaillés touchant entre autres les arbres.

DATE :

Le 28 janvier 1991

CH-90-03 RÉQUÉRANT : Les sociétés 272944 Ontario Limited et 272139 Ontario Limited, généralement connues sous le nom d'Enterra

Deux affaires reliées ont été soumises à la Commission : une demande d'autorisation d'une ébauche de plan visant à morceler un terrain de 70,9 hectares (175,2 acres) en 73 lots résidentiels dans le village de Belfountain, dans la municipalité de Caledon, et un appel interjeté par le promoteur à qui la Commission de l'escarpement du Niagara avait refusé un permis visant les unités résidentielles, l'aménagement du terrain et les installations connexes.

L'emplacement en question est désigné « petit centre urbain » dans le Plan de l'escarpement du Niagara, il est visé par les désignations « aménagement naturel » « protection de l'escarpement » et « aménagement rural ». Le terrain est une terrasse boisée située près du sommet de la vallée de la rivière Credit.

Au début de l'audience, quand le cas du proposant a été exposé, les avocats de la Caledon Ratepayers' Association – appuyés par la Commission de l'escarpement du Niagara, l'office de protection de la nature de la vallée de la rivière Credit et la municipalité régionale de Peel – ont présenté une motion demandant à la Commission de refuser d'autoriser, en vertu des dispositions de la Loi sur l'aménagement du territoire, la demande concernant l'ébauche de plan de lotissement et de refuser la demande de permis d'aménagement en vertu de la Loi sur la planification et l'aménagement de l'escarpement du Niagara.

La Commission a aussi entendu des demandes de remboursement des frais présentés au nom de la ville de Caledon, de la Caledon Ratepayers' Association, de l'office de protection de la nature de la vallée de la rivière Credit et de la municipalité régionale de Peel.

QUESTION : L'emplacement en question, une parcelle de terrain de 0,405 hectare (un acre), dans la ville de Grimsby, est situé dans la zone protégée de l'escarpement du Niagara prévue par le Plan de l'escarpement du Niagara. Il s'agissait de décider du droit d'un «agriculteur de bonne foi» à un terrain où se retirer, conformément aux dispositions du Plan de l'escarpement du Niagara et du Plan officiel de la région du Niagara.

DÉCISION : L'appel de la Commission de l'escarpement du Niagara a été débouté et le consentement a été accordé, en vertu du paragraphe 52(18) de la Loi sur l'aménagement du territoire (qui traite des conditions imposées par le conseil municipal); le permis d'aménagement a aussi été accordé, sous réserve des conditions de la Commission de l'escarpement du Niagara en ce domaine.

DATE : Le 9 juillet 1990

APPEL : La Commission de l'escarpement du Niagara a interjeté appel auprès du Cabinet le 1^{er} août 1990. Le 6 février 1991, le Cabinet a annulé la décision de la commission mixte et a indiqué que les demandes de permis de lotissement et d'aménagement étaient rejetées.

CH-90-01 REQUÉRANTS : Reinhold et Brunhilde Wechsel

Cette affaire a entraîné deux appels : les requérants ont interjeté appel d'une décision du comité de rajustement du canton de Mono, qui avait rejeté la demande visant la cession d'une parcelle de 0,81 hectare (deux acres) d'un terrain de 20,2 hectares (50 acres) dans le canton de Mono. Le second appel a été interjeté par Karin Blouman, Wallace Barr, Lynne Suo et Clive Cockerton. L'appel visait une décision de la Commission de l'escarpement du Niagara, qui autorisait une demande de permis d'aménagement pour une habitation unifamiliale sur l'emplacement en question.

QUESTION : L'emplacement se trouve dans la zone protégée de l'escarpement du Niagara, conformément au Plan de l'escarpement du Niagara. La principale question était de savoir si le permis était conforme aux critères d'aménagement et aux dispositions régissant les nouveaux lots du Plan de l'escarpement du Niagara, de même qu'aux exigences visant le morcellement contenues dans la Loi sur l'aménagement du territoire.

DÉCISION : L'appel interjeté par les Wechsel a été rejeté et le consentement refusé. Le permis d'aménagement a par conséquent été annulé.

DATE : Décision communiquée oralement : le 14 août 1990
Texte de la décision et motifs : le 22 octobre 1990

APPEL : Les Wechsel ont interjeté appel auprès du Cabinet le 11 septembre 1990. On attend la décision.

CH-89-04	REQUÉRANT	Tom Valslar	La Ville de Niagara-on-the-Lake en a appelé de la décision du comité de morcellement des terres de la région, qui autorisait Tom Valslar à céder une propriété à sa propre compagnie, la Scott Street Greenhouses Ltd. La Commission de l'escarpement du Niagara a renvoyé à une commission mixte une requête accessoire de permis d'aménagement pour un passage pour piétons reliant deux serres, sur les terres en question.	La principale question était de savoir si le Plan de l'escarpement du Niagara autorisait la mise en activité d'une serre commerciale près d'une zone résidentielle.	La commission mixte a rejeté l'appel et accordé le permis d'aménagement sous réserve de certaines conditions.	Le 29 juin 1990	LAC Minerals Ltd.	Projet d'agrandissement d'une carrière de calcaire située à Milton, dans l'escarpement du Niagara.	Le 31 mai 1990	CH-89-07	REQUÉRANT	Doriano Polgni	Deux appels : la Commission de l'escarpement du Niagara en a appelé de la décision du comité de morcellement des terres de la municipalité régionale de Halton, qui autorisait le requérant à lotir la propriété en question. La Commission de l'escarpement du Niagara a refusé d'accorder le permis d'aménagement pour la propriété en question et le requérant en a appelé de cette décision.	Il s'agissait avant tout de savoir si les demandes étaient conformes au Plan de l'escarpement du Niagara et au Plan officiel de Halton.	La commission mixte a jugé que les demandes de lotissement et d'aménagement étaient conformes au Plan de l'escarpement du Niagara et au Plan officiel de la région. L'appel de la Commission de l'escarpement du Niagara a été rejeté et la Commission a décidé qu'un permis d'aménagement serait émis sous réserve des conditions proposées par la Commission de l'escarpement du Niagara.	Décision et motifs : le 12 juin 1990	Ann Andreychuk	Deux appels : la Commission de l'escarpement du Niagara en a appelé de la décision du comité de morcellement des terres de la municipalité régionale du Niagara, qui autorisait une demande de morcellement. L'autre appel visait le rejet par la Commission de l'escarpement du Niagara d'une demande de permis d'aménagement pour une habitation unifamiliale.	CH-89-10	REQUÉRANT
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L'audience a été reportée pour une période indéterminée dans l'attente d'une modification de la demande du requérant et d'un nouveau renvoi par le directeur des autorisations. La Commission a découvert que la capacité autorisée de la décharge augmenterait de 50 p. 100.

Le 26 juillet 1990

À la suite de cette décision, le promoteur a modifié sa demande du point de vue de l'augmentation de la capacité, mais le directeur n'a pas soumis la demande révisée à la Commission afin qu'elle tienne une audience.

LA LOI DE 1981 SUR LA JONCTION DES AUDIENCES

North Simcoe Waste Management Association

CH-87-03 REQUÉRANT

Une décision d'une commission mixte rendue en novembre 1989 a été portée en appel devant le Cabinet. Cette décision rejetait une demande d'autorisation visant la création d'une nouvelle décharge municipale. La commission mixte a refusé l'évaluation environnementale du proposant en raison des lacunes que présentaient les processus de planification et de sélection de l'emplacement. Le proposant a interjeté appel auprès du Cabinet.

DÉCISION DU CABINET

Le Cabinet a substitué sa décision à celle de la commission mixte. Il a enjoint le proposant de pousser plus avant ses recherches d'emplacements comparables à celui qui a été choisi; il a aussi demandé à la Commission de revoir l'importance accordée aux terres agricoles dans l'analyse comparative. Selon le résultat des nouvelles recherches, l'emplacement choisi ou un nouvel emplacement devra être soumis au processus d'autorisation.

DATE DE LA DÉCISION DU CABINET : Le 14 juin 1990

À ce jour, le proposant n'a soumis aucune nouvelle demande.

Communauté urbaine de Toronto (CUT)

CH-89-01 REQUÉRANT

La communauté urbaine de Toronto se proposait d'acquérir une propriété dans la ville de Vaughan, afin d'y extraire de l'argile pouvant servir de sous-couche et de couverture pour le lieu d'enfouissement de Keele Valley. La demande a été différée après plus de 40 jours d'audience en raison de son caractère prématuré et du manque de préparation du proposant. La CUT a dû défrayer une partie des coûts engagés pour l'audience par la ville de Vaughan, Rizmi Holdings Ltd., Nordale Investments Inc. et une coalition locale.

QUESTION :

La principale question était de savoir si le projet de carrière d'argile devait être autorisé.

Motifs : le 4 mai 1990

DATE :

Décision et motifs de l'adjudication des dépens : le 10 septembre 1990

Ordonnance d'adjudication des dépens : le 4 octobre 1990.

Une demande de révision judiciaire a été déposée par le proposant, la CUT, le 14 décembre 1990.

INDEX DES DÉCISIONS



LOI SUR LA PROTECTION DE L'ENVIRONNEMENT

EP-89-03 REQUÉRANT : Inesco, Inc.

Le projet visait un système de gestion des déchets, soit une installation mobile (classe I) d'élimination des BPC. Le système devait être utilisé dans une décharge du parc industriel de Smithville, dans le canton de Lincoln-Ouest, municipalité régionale du Niagara.

QUESTION :

L'utilisation d'une installation mobile, pendant une période donnée, pour détruire des BPC et décontaminer les sols dans une décharge.

DÉCISION :

La Commission a émis des certificats d'autorisation visant :

- (1) un système de gestion des déchets, soit une installation mobile (classe I) d'élimination des BPC (technologie);
- (2) l'utilisation d'une installation mobile (classe I) d'élimination des BPC

à la décharge située dans le parc industriel de Smithville, afin de décontaminer le lieu d'entreposage de la Chemical Waste Management Limited (CWM), que possède et gère actuellement le ministère de l'Environnement.

Conjointement à ces autorisations, la Commission a chargé le directeur des autorisations du ministère de l'Environnement d'émettre les certificats d'autorisation pour l'emplacement et le système, sous réserve de conditions précises concernant le système et l'emplacement et d'engagements que doit remplir le ministère de l'Environnement.

L'application du règlement de zonage du canton de Lincoln-Ouest a été suspendue pour la durée d'utilisation des installations.

DATE :

Décision : le 11 mai 1990
Motifs : le 12 juillet 1990

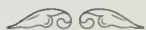
EP-89-04 REQUÉRANT :

Steelley Quarry Products Inc.

Le requérant a demandé que soit modifié un certificat d'autorisation provisoire, daté du 5 avril 1978, visant une décharge dans le canton de Flamorough, dans la municipalité régionale de Hamilton-Wentworth. Le projet visait l'agrandissement de l'aire de service de l'emplacement, ce qui aurait permis d'accueillir plus de clients, de même que la modification du profil de l'emplacement. Le nombre de monticules serait passé de quatre à un et l'inclinaison aurait été réduite, sans que la capacité autorisée du lieu s'en trouve accrue.

QUESTION :

Il s'agissait de savoir si la proposition visant la modification du profil du terrain augmenterait la capacité autorisée de la décharge.



Une fois réunies, ces décisions liées à des entreprises de grande ou de plus modeste envergure peuvent avoir une influence considérable sur la qualité de l'environnement de l'escarpement.

En juin 1990, le ministre de l'Environnement a été chargé de l'application de la Loi sur la planification et l'aménagement de l'escarpement du Niagara. Dans le cadre de l'évaluation du rôle et des responsabilités que le Ministère a par la suite effectuée, John Duncanson et John McClellan, agents d'audience dans le dossier de l'escarpement du Niagara, ont été nommés membres de la Commission des évaluations environnementales le 1^{er} janvier 1991. Leur nouveau rôle inclura la tenue d'audiences à titre de membres de commissions

mixtes, dans le cas des appels liés à des modifications du Plan ou aux permis d'aménagement touchant des entreprises mises en oeuvre dans le secteur visé par le Plan de l'escarpement du Niagara.

Vers la fin de 1990, la première révision quinquennale du Plan de l'escarpement du Niagara a été réalisée, comme l'exigeait la Loi sur la planification et l'aménagement de l'escarpement du Niagara (article 17), ce qui a marqué une nouvelle étape dans la planification de l'escarpement du Niagara. En participant au comité chargé des audiences publiques sur le plan révisé, la Commission jouera un rôle dans l'évolution de ce dernier. Les audiences sont prévues pour l'automne 1991.

Mme Norma Geniole, l'agente administrative responsable des agents d'audience, continuera d'exercer ses activités dans les bureaux de la Commission.

En vertu de la Loi de 1981 sur la jonction des audiences, la Commission a pris, au cours des deux dernières années, une part de plus en plus active aux audiences liées au Plan de l'escarpement du Niagara. Selon cette Loi, un promoteur dont la proposition requiert la tenue d'audiences devant plus d'un tribunal peut demander que soit tenue une audience devant une commission mixte « composée d'un ou de plusieurs membres de la Commission des évaluations environnementales ou de la Commission des affaires municipales de l'Ontario ou des deux » [paragraphe 4(4)]. La Loi sur la planification et l'aménagement de l'escarpement du Niagara est l'une des 12 lois qui régissent la jonction des audiences.

En vertu de cette législation, les membres de la Commission qui font partie d'une commission mixte ont participé à des audiences tenues sur un vaste éventail d'entreprises du secteur privé. Généralement, celles-ci visaient des lotissements et des autorisations aux termes de la Loi de 1983 sur l'aménagement du territoire, ou des permis d'aménagement aux termes de la Loi sur la planification et l'aménagement de l'escarpement du Niagara. Conformément à ce qui est indiqué dans l'Index des audiences présentée plus loin dans le présent document, ces audiences différaient des appels. Certaines portaient sur un ou deux lots résidentiels ou édifices se trouvant sur la rive ouest du lac Eugénia, secteur désigné « petit centre urbain » dans le Plan de l'escarpement du Niagara. Une autre audience visait un important projet résidentiel, qui s'étendait sur des zones désignées « aménagement naturel », « protection de l'escarpement » et « aménagement rural », près du sommet de la vallée de la rivière Credit, dans le village de Belfountain.

si elle explique les raisons qui motivent l'adjudication des dépens, les parties sauront à quoi s'en tenir.

Dans l'affaire Kam (EA-91-01), qui avait trait à l'évaluation environnementale d'un projet d'installation hydro-électrique, une demande d'adjudication des dépens a été faite après que plusieurs motions eurent été débattues avant même que les témoignages ne soient entendus. Dans sa décision, rendue le 22 février 1991, la Commission a indiqué qu'elle n'adjudgerait pas de dépens parce qu'elle n'avait pas l'habitude de le faire pour des débats interlocutoires. Toutefois, elle a indiqué que, dans le cas de cette audience, elle pourrait adjudger de tels dépens dans l'avenir.

Le 20 mars 1991, la Commission, en procédant aux débats entourant le Plan de l'offre et de la demande d'*Ontario Hydro* (EA-90-01), a émis un document intitulé *Cost Guidelines*, pour aider les parties avant l'audition des témoignages. Ce sont les directives sur les coûts les plus détaillées qui aient été publiées à ce jour par un comité de la Commission des évaluations environnementales.

Il était prévu que les audiences entourant le dossier d'*Ontario Hydro* seraient longues et que les lignes directrices ne s'appliqueraient pas nécessairement aux autres audiences. Comme on l'indique clairement, elles ne visent pas à limiter le pouvoir discrétionnaire que la Commission détient en ce qui a trait aux dépens, et, au besoin, elles pourraient être modifiées par la Commission de temps à autre.

Les éléments clés de ces directives sont les suivants :

- les parties qui contribuent de manière responsable à l'audience peuvent s'attendre à se voir adjudger tous leurs dépens ;
- si, du point de vue de la Commission, la participation d'une partie semble avoir une intention négative – parce qu'elle n'est pas sérieuse, contrariante ou sans intérêt – la Commission pourrait n'adjudger qu'une partie des dépens, refuser tout versement de fonds, voire même exiger que la partie rem-bourse les frais des autres parties ;
- les dépens comprennent les coûts raisonnables engagés directement et obligatoirement par une partie pour la préparation et la présentation de

- données et ils incluent la rémunération des employés (y compris le paiement des employés qui assurent des services juridiques, d'expert, de consultation professionnelle et de gestion de cas), les frais de voyages et autres dépenses associées, les coûts de transcription, de photocopie, de télécopie et de livraison, et d'autres frais qu'il est possible d'évaluer ;
- les dépens n'incluent pas les frais qui ont été réclamés et non obtenus auprès du comité d'aide financière aux intervenants, à moins qu'une autorisation en ce sens n'ait été accordée ;
- toutes les demandes doivent être accompagnées de reçus, d'un compte de dépenses détaillées et d'une déclaration solennelle ;
- les frais admissibles pour les services juridiques sont limités ;
- les frais liés aux propositions interlocutoires sont généralement inclus dans les coûts de l'audience ;
- certains dépens pourraient être refusés quand une motion, ou une partie de celle-ci, a été rejetée et que la Commission juge qu'elle n'était pas nécessaire, qu'elle n'aurait pas dû être présentée ou qu'elle n'avait aucune chance de succès ;
- la Commission peut accorder, à certaines étapes de l'audience, une aide provisoire pour des dépenses engagées et effectuées avant la fin de l'audience, jusqu'à un maximum de 80 p. 100 de la somme maximale permise ;
- une demande d'aide provisoire peut être faite plus tôt si, en agissant autrement, la partie compromet-tait sa participation à l'audience ;
- l'aide provisoire est incluse dans toute attribution finale de fonds, mais elle ne doit pas être remboursée à la Commission si la somme finale est moindre que l'aide provisoire déjà accordée et versée ;
- est jugée responsable toute contribution qui, peu importe la position défendue, aide la Commission à comprendre le dossier et à prendre une décision ;
- en adjudgeant des dépens, la Commission ne fait aucune distinction entre les parties qui ont des intérêts publics et celles qui ont des intérêts privés.

nécessaire. Plusieurs autres parties qui n'ont pas participé activement à l'audience se sont vues accorder seulement 20 p. 100 de leurs frais de justice et une déduction supplémentaire a été effectuée pour tous les frais de justice reliés au « temps passé à communiquer avec les organismes gouvernementaux et des individus pour obtenir de l'aide financière aux intervenants ou pour constituer un des groupes en société ».

Dans ses directives, la Commission inclut généralement des listes de facteurs qui lui servent à accorder de l'aide financière à une partie ou à ses opposants. Même si ces listes varient d'un cas à l'autre, elles contiennent tous ou presque tous les facteurs contenus dans le rapport de la décision visant *Entera*. Toutefois, deux autres éléments ont été pris en considération dans les directives émises par la Commission le 26 octobre 1990, dans le cas de la demande d'agrandissement de la décharge de Kenora (EP-90-02). Ces facteurs, qui ont été adoptés à l'origine dans le cas de la Société ontarienne de gestion des déchets, sont :

- (viii) une partie a contesté un fait, un résultat ou un avis d'expert quand il était déraisonnable de le faire;
- (ix) la conduite d'une partie tendait à raccourcir ou à prolonger inutilement la durée de l'audience.

Dans l'ébauche des directives émises par une commission mixte en novembre 1990 relativement à la demande touchant la décharge de Durham (CH-90-09), la liste des facteurs incluait également les éléments suivants :

- la partie avait déposé tous les documents dans les délais impartis autre part dans les directives;
- la partie avait déposé les documents aussi rapidement que possible avant ces délais;
- la conduite d'une partie tendait à retarder l'audience;
- il y avait dédoublement des témoignages, des documents de preuve et des présentations.

En affirmant clairement que ces facteurs influencent ses décisions, la Commission met les parties en garde avant même que les témoignages ne soient entendus : les étapes de procédure qui précèdent l'audience doivent être effectuées aussi efficacement que possible, et l'audience doit se dérouler de la même manière. Les membres de la Commission espèrent que

La Commission a observé que nulle partie n'avait demandé plus de temps pour se préparer ou un ajournement et que le proposant « n'était pas correctement ou adéquatement préparé ». Il semble que « chacun voulait en finir au plus vite ».

La Commission a adjué des dépens au groupe de contribuables local, mais elle a rejeté les dépenses d'impression et de collecte de fonds, ainsi que le coût du travail préparatoire effectué par un expert-conseil qui ne pouvait participer à l'audience et les honoraires d'un expert-conseil pour du travail effectué « avant qu'une commission mixte n'ait été formée officiellement ». Elle a déduit la somme que le groupe avait recueillie à l'extérieur de l'audience. A aussi été déduite la somme correspondant aux coûts de travaux qui profiteraient au groupe de contribuables au cours d'une audience tenue devant les membres de la Commission des affaires municipales de l'Ontario qui font partie de la même commission mixte.

Au terme de la première étape de la demande visant la carrière d'argile d'Avondale North (CH-89-01), une audience par étapes tenue devant une commission mixte, les parties opposées ont demandé la fin de l'audience. La Commission a décidé que, étant donné que le proposant avait fait sa demande trop rapidement et qu'il n'était pas prêt à la défendre, elle transmettrait la demande à une autre commission mixte.

La Commission a ordonné que la moitié des honoraires des experts-conseils des parties opposées, lesquels n'ont pas été appelés à témoigner à la suite de cette décision, seraient payés par le proposant. Pour évaluer les demandes de remboursement de frais de justice des requérants, la Commission s'est fondée sur « l'importance et l'intérêt de chaque partie, la contribution à l'audience de chaque avocat et une estimation de la participation et de la contribution de chacun si l'audience s'était poursuivie ».

Les demandes de remboursement de frais de justice et d'indemnisation de témoins faites par la Ville de Vaughan, une partie opposée, ont été réduites de 20 p. 100 parce qu'elle a perdu du temps et engagé des dépenses liées à certaines allégations qu'elle n'a pu prouver. Une autre partie n'a reçu que le remboursement de 50 p. 100 de ses frais de justice, la Commission ayant jugé que sa participation à tous les aspects de la première étape des audiences n'était pas

qu'une demande d'aide supplémentaire ne soit présentée.

Afin de clarifier les conditions d'obtention de financement supplémentaire, la Commission d'audience a établi une série de questions auxquelles tout requérant doit répondre. Par exemple, le requérant a-t-il déjà demandé de l'aide financière pour les mêmes éléments? Le comité d'aide financière lui a-t-il déjà refusé de l'aide financière ou une nouvelle affectation de fonds?

L'ADJUDICATION DES DÉPENS ET LES TENDANCES ACTUELLES

Les dépens adjugés par la Commission des évaluations environnementales sont importants pour les parties qui ne reçoivent pas d'aide financière aux intervenants et pour celles qui ont besoin d'une aide financière supérieure à celle qu'elles ont reçue.

Plusieurs décisions prises au cours de la dernière année peuvent être utiles aux membres du public qui souhaitent comprendre comment la Commission envisage l'adjudication des dépens. À titre d'exemple, voici certaines décisions, dans l'ordre où elles ont été annoncées.

Dans le cas *Entierac* (Belfountain) (CH-90-03), une commission mixte, sur une proposition des parties opposées au projet, a rejeté, avant la fin de l'audience, les demandes de permis d'aménagement et d'autorisation d'une ébauche de plan de lotissement. La Commission a entendu les dépositions des témoins du proposant pendant 18 jours, mais elle a rejeté les demandes en raison de leur caractère prématuré et d'une insuffisance de preuve. Les parties opposées au projet n'ont pas produit de preuves.

Dans sa décision du 28 août 1990, la Commission a examiné le problème posé par l'évaluation de la contribution d'une partie dont le cas a été abandonné, mais qui avait déjà consacré un travail considérable à la préparation et versé des sommes importantes à des experts-conseils. Elle a rejeté une demande visant l'adoption de la «méthode juridique d'attribution des coûts gagnant-perdant» et elle a plutôt choisi d'examiner dix facteurs, mentionnés ci-dessous, qui découlent de décisions de commissions mixtes jugées pertinentes pour ce cas :

1. Quelles sont les caractéristiques du proposant?
 2. La partie a-t-elle ou non un intérêt évident et vérifiable à être représentée et une raison précise de participer à l'audience?
 3. La partie a-t-elle fourni de l'aide et contribué de façon importante à l'audience?
 4. La participation de la partie a-t-elle favorisé une meilleure compréhension des sujets traités?
 5. La partie a-t-elle besoin de cette aide financière? A-t-elle d'autres sources de financement ou a-t-elle tenté en vain d'en obtenir? Le cas échéant, de combien s'agissait-il?
 6. Pouvait-on clairement justifier le but de ces dépenses? En a-t-on rendu compte?
 7. Y a-t-il eu des efforts concertés afin de réunir certains intérêts quand les préoccupations étaient convergentes?
 8. La partie a-t-elle établi un dossier sur la question et démontré un engagement responsable vis-à-vis de celle-ci?
 9. Les parties ont-elles collaboré les unes avec les autres afin d'engager les mêmes experts pour présenter les éléments de preuve devant la Commission?
 10. L'adjudication des dépens corrigera-t-elle un déséquilibre entre les parties?
- La Commission a décidé que le financement public de la municipalité régionale, de la ville et de l'office de protection de la nature ne réduisait pas, en soi, leur admissibilité aux dépens. La Commission a toutefois stipulé que, étant donné qu'«ils exécutaient simplement leurs tâches habituelles en défendant, dans l'intérêt du public, leurs politiques relatives à l'aménagement et à l'environnement, nulle aide financière ne leur serait attribuée, même si leur présence à l'audience était jugée nécessaire et souhaitable. De plus, la Commission a critiqué l'empressement avec lequel ils ont mis l'audience en train, alors qu'il fallait plus de temps pour mener les consultations et les négociations.
- La Commission s'est inquiétée du fait que le ministère des Richesses naturelles et le ministre de l'Environnement, qui étaient des parties à cette affaire, n'avaient pas informé le proposant de leurs préoccupations plus tôt au cours du processus. S'ils l'avaient fait, ce dernier aurait pu leur répondre.

modifier la Loi sur le projet d'aide financière aux intervenants

- de manière à :
- permettre au président de la Commission des évaluations environnementales d'affecter plus d'une personne à un comité chargé d'attribuer l'aide financière pour les audiences de la Commission des évaluations environnementales;
- permettre au comité d'audience de prendre des décisions préliminaires – avant le début du programme d'aide financière aux intervenants – sur la formule de l'audience et les questions qui y seront traitées;
- permettre au comité d'aide financière de définir les dépenses admissibles;
- permettre à la Commission d'audience de prendre des décisions sur les questions de juridiction, de pertinence et de procédure qui sont soulevées au cours du processus de financement et qui lui sont soumises par le comité d'aide financière ou, par voie de motion, par le promoteur ou les intervenants.

INSTRUCTIONS RELATIVES AU FINANCEMENT SUPPLÉMENTAIRE ACCORDÉ AU PLAN DE L'OFFRE ET DE LA DEMANDE D'ONTARIO HYDRO

Avant la présentation des éléments de preuve, la Commission d'audience a traité certaines questions liées au financement supplémentaire. Certaines d'entre elles ont été soumises par le comité de l'aide financière. En les traitant, la Commission a établi des principes qui devront être suivis de manière générale dans l'avenir :

- La Commission n'accorde pas de financement à la recherche initiale.
- La disposition de la Loi de 1988 sur le projet d'aide financière aux intervenants, [paragraphe 12(1)] visant le financement supplémentaire ne prévoit pas de mécanisme permettant d'en appeler de la décision initiale relative au financement.
- Normalement, pour recevoir du financement supplémentaire, la partie doit répondre à deux critères : elle doit être capable de démontrer que la situation a changé, ce qui rend l'aide financière initiale inadéquate, et, en règle générale, les fonds reçus au départ doivent avoir été épuisés avant

été déclarés admissibles après la décision de la première étape et, le cas échéant, sélectionner les requérants et préciser le montant à verser.

Les audiences portant sur ces questions ont commencé au début de septembre. En dépit de leurs efforts, les intervenants ont démontré qu'ils n'étaient pas toujours bien préparés pour soumettre les questions qui les préoccupaient aux experts embauchés par les autres parties. Par conséquent, au cours de l'audience, les parties ont été avisées que l'avocat du comité d'aide financière serait chargé de tenir des réunions avec certains groupes d'intervenants.

L'objectif était de créer un cadre favorisant la discussion et la négociation entre les parties ayant des intérêts convergents (par exemple, les parties préoccupées par les effets sur la santé, les groupes autochtones inquiets des effets potentiels sur leur mode de vie traditionnel, sur leurs terres, sur leurs revendications ou sur les droits/découlant de traités, les groupes d'intérêt public, etc.)

Pendant environ cinq semaines, les parties ont réussi à former de nouvelles coalitions et elles ont révisé de façon substantielle leurs demandes d'aide financière. De plus, elles ont semble mieux connaître le rôle de chacune dans le cadre de l'audience et, dans de nombreux cas, elles ont jeté les bases de leur collaboration et échange de l'information. On espère que ces relations de travail aideront les parties et la Commission au cours des prochains débats.

Après une dernière ronde de présentations effectuées par les requérants et le proposant, les demandes ont été réévaluées par le comité d'aide financière, qui a rendu sa décision le 14 décembre 1990. Vingt-neuf intervenants ont ainsi obtenu des fonds.

Le processus d'aide financière aux intervenants était complexe. Les intervenants devaient fournir toute l'information requise en peu de temps. Le comité a également dû interpréter les exigences d'admissibilité établies par la Loi et les appliquer à des parties qui représentaient un vaste éventail de perspectives et d'intérêts au sein de la multitude de questions entourant le plan d'Ontario Hydro, qui porte sur une période de 25 ans.

Mettant à profit son expérience au chapitre des programmes d'aide financière aux intervenants, la Commission a recommandé au gouvernement de

L'AIDE FINANCIÈRE AUX INTERVENANTS, LE FINANCEMENT SUPPLÉMENTAIRE ET L'ADJUDICATION DES DÉPENS



allaient être soulevées, au cours des audiences et du nombre potentiel de candidats à l'aide financière, il a été décidé que le programme serait divisé en deux étapes.

La première étape avait pour objectif :

- d'établir l'admissibilité des intervenants conformément à la Loi sur le projet d'aide financière aux intervenants;
- de fournir de l'aide financière préliminaire aux parties admissibles afin de les aider à établir les questions qu'ils aimeraient aborder;
- d'aider les parties admissibles à négocier entre elles pour éviter le doublement;
- d'élaborer des plans en vue de leur intervention;
- d'aider les parties admissibles à assister aux audiences préliminaires.

La deuxième étape avait pour objectif d'accorder de l'aide financière à la préparation et à la participation à une audience, conformément au plan élaboré lors de la première étape.

Le nombre de requérants pour la première étape s'est élevé à 59. Après une audience tenue au début de juin 1990, le comité d'aide financière a déclaré 27 des requérants admissibles à l'aide financière aux fins de la première étape.

En juillet, les 27 requérants sélectionnés ont reçu un avis leur indiquant que la seconde étape de l'aide financière débuterait le 4 septembre 1990. Le même avis a été envoyé aux intervenants qui avaient été déclarés admissibles par la Commission après la décision de la première étape.

Cet avis précisait les buts de la seconde étape des audiences :

premièrement, déterminer s'il faut accorder une aide financière additionnelle aux intervenants qui ont été déclarés admissibles à la première étape et, le cas échéant, sélectionner les requérants et préciser le montant à verser, compte tenu des estimations et des plans préparés lors de la première étape;

deuxièmement, déterminer si l'aide financière devrait être versée aux intervenants qui ont

LE POINT SUR L'AIDE FINANCIÈRE AUX INTERVENANTS

L'aide financière aux intervenants est administrée par la Commission en vertu de la Loi de 1988 sur le projet d'aide financière aux intervenants, qui a été adoptée le 1^{er} avril 1989. Cette loi prévoit la création d'un projet pilote de trois ans, dont l'objectif est de fournir du financement aux intervenants admissibles qui comparaissent devant la Commission des évaluations environnementales, les commissions mixtes (conformément à la Loi de 1981 sur la jonction des audiences), ou encore la Commission de l'énergie de l'Ontario.

La Loi sera en vigueur jusqu'au 1^{er} avril 1992.

Avant l'adoption de la Loi sur le projet d'aide financière aux intervenants, la Commission administrait les programmes d'aide financière aux intervenants établis par décret sur une base individuelle pour les audiences tenues par la Commission des évaluations environnementales ou la Commission mixte. Certaines de ces audiences se poursuivent à l'heure actuelle et la Commission continue d'administrer les fonds qui leur sont associés. Les réclamations de fonds relatives à l'aide financière accordée par décret et en vertu de la Loi sur le projet d'aide financière aux intervenants sont actuellement traitées par la Direction de la gestion financière et des immobilisations du ministère de l'Environnement.

Depuis l'adoption de la Loi sur le projet d'aide financière aux intervenants, la Commission gère les programmes d'aide financière conformément à ses exigences. Le programme d'aide financière aux intervenants pour les audiences relatives au Plan de l'offre et de la demande d'Ontario Hydro tenues devant la Commission des évaluations environnementales a constitué la principale application de cette nouvelle loi.

Un comité d'aide financière a été nommé pour les audiences d'Ontario Hydro en avril 1990. En prévision de l'importance et de la complexité des questions qui



au public un accueil courtis dans une atmosphère de simplicité.

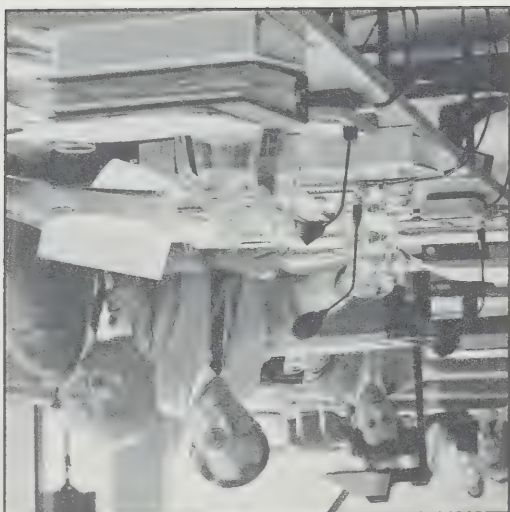
La Commission a préparé un document intitulé *Public Participation in the Hearing*, afin d'aider les personnes qui désirent participer aux audiences, peu importe le rôle qu'elles entendent y jouer. Parallèlement, la Commission souhaite que le public profite des occasions qui lui sont données par le proposant. Si les gens sont préoccupés par certains aspects de la demande du proposant, ils devraient lui en faire part rapidement, plutôt que d'attendre l'audience pour soulever la question une première fois.

Selon la Commission, le proposant devrait fournir au public des occasions de participer au processus et, dans sa documentation aussi bien qu'au cours de l'audience, il devrait indiquer à la Commission ce qu'il a fait à ce titre et comment il a répondu aux questions soulevées par le public.

La Commission est convaincue de l'importance de la participation du public à ses activités et elle croit que les personnes touchées par ses décisions devraient avoir l'occasion de participer au processus à l'issue duquel elles sont prises. De plus, les membres du public possèdent des informations et des connaissances qui pourraient aider la Commission à prendre ses décisions.

Les membres du public participent aux audiences de diverses manières : individuellement ou en groupe, avec ou sans conseiller juridique. Ils peuvent faire une présentation directement devant la Commission ou être partie à l'audience (dans ce cas, ils ont le droit de demander de l'aide financière, d'appeler des témoins et de les interroger, et de faire des présentations devant la Commission).

Les audiences de la Commission prévoient généralement des séances le soir pour ceux qui ne peuvent se présenter le jour et on s'efforce d'assurer





- La participation du public à une évaluation environnementale :
- La Commission a indiqué que la participation du public était souhaitable, mais elle n'a pas jugé nécessaire de décider si une telle participation était une exigence implicite de la Loi.
 - Le but de l'entreprise :
 - La Commission a soutenu que le but, tel qu'il était décrit, ne limitait pas indûment l'éventail des solutions de rechange et qu'il était par conséquent acceptable.
 - Le processus de sélection de l'emplacement :
 - La Commission a décrit les problèmes posés par le processus de sélection de l'emplacement retenu par le proposant, particulièrement en ce qui a trait à l'établissement et à l'application des critères permettant de découvrir et d'évaluer les solutions de rechange. Elle a soutenu que la Loi exigeait un processus de sélection approprié, et qu'un tel processus contribuait à assurer l'équité et à minimiser les incidences négatives du projet sur l'environnement.
- La Commission a aussi formulé des commentaires sur la manière de traiter certaines incertitudes quant aux éléments techniques de preuve.
- La décision a été portée en appel devant le Cabinet.

Lot sur les évaluations engendrées :

La Commission a soutenu qu'il était nécessaire de mettre en place un processus de planification, que ce dernier aurait dû être établi avant la sélection de l'option retenue, que, à tout le moins, des critères pouvant permettre de définir et d'évaluer des solutions de rechange auraient dû être élaborés. L'importance relative des critères devrait pouvoir être évaluée, de façon à ce qu'un cadre d'évaluation soit créé.

- La ville de Meaford et le canton de St. Vincent ont présenté une demande devant une commission mixte en vertu de la Loi sur la jonction des audiences, afin d'obtenir l'autorisation d'établir une nouvelle déchargé municipale. À la suite d'une fort longue audience, la Commission a rendu sa décision en décembre 1990 : l'évaluation environnementale du proposant a été rejetée parce que le processus de sélection de l'emplacement présentait de sérieuses lacunes.
- Dans sa décision, la Commission a traité un certain nombre de questions liées à l'évaluation environnementale, dont :
- la nécessité de recourir à un processus de planification

MEAFORD

d'autorisation du projet, de même que la qualité et la quantité d'argile nécessaires pour remplir ces conditions. À la fin de la première étape, deux des parties opposées ont demandé à la Commission mixte de rejeter les demandes, étant donné que le proposant n'avait pas prouvé qu'il avait besoin de l'argile provenant de la carrière d'Avondale North. Dans une contre-proposition, la CUT a contesté le pouvoir de la Commission de rejeter les demandes, en indiquant que celle-ci n'avait entendu que les témoignages présentés à une étape de l'audience.

La Commission mixte a statué que les propositions de rejet avaient été présentées en temps opportun et qu'elle avait le pouvoir de les traiter. En réponse aux motions en faveur du rejet des demandes, la Commission mixte a donc déclaré que le bien-fondé de l'entreprise n'était pas prouvé quant aux sols, un sujet qui avait été traité au cours de la première étape. Elle a toutefois indiqué que les témoignages concernant les répercussions économiques et environnementales, qui devaient être entendus au cours des étapes suivantes, pourraient avoir une influence sur le rejet ou l'acceptation du projet de carrière d'argile. Par conséquent, l'utilisation de la carrière d'argile d'Avondale North ne pouvait être rejetée à ce moment.

Même si elle n'a pas rejeté les demandes, la Commission a jugé que le proposant n'avait pas préparé ses arguments de manière à couvrir tous les aspects de la question de la couverture, qui constituait pourtant l'une des justifications de la demande. La Commission a par ailleurs commenté les changements substantiels qui avaient été apportés à la demande depuis qu'un avis avait été remis au greffier d'audience en janvier 1989.

De plus, la Commission mixte a relevé les incertitudes entourant l'avenir du lieu d'enfouissement de Keele Valley, que la CUT et la région de York se proposaient d'agrandir. La proposition de York avait été endossée par le Comité directeur intérimaire sur les déchets solides, formé de représentants des cinq municipalités régionales du grand Toronto et d'un représentant du ministère de l'Environnement.

La Commission mixte a examiné la possibilité de reporter l'audience à une date déterminée, ce qui permettrait au proposant de terminer ses demandes et le

projet d'agrandissement du lieu d'enfouissement de Keele Valley — questions qu'il ne serait vraisemblablement pas possible de traiter avant plusieurs mois. De plus, la Commission mixte a souligné que si l'agrandissement du lieu d'enfouissement de Keele Valley faisait l'objet d'une audience, la Commission ne pourrait traiter les demandes sans reprendre le tout à zéro avec un nouveau proposant, la région de York, ou avec la région de York et la CUT à titre de coproposant.

En évaluant la possibilité de reporter l'audience, la Commission mixte a jugé qu'une grande partie des 40 jours d'audience avait servi à tenter de vérifier les autorisations accordées par le ministère de l'Environnement à divers facteurs de conception et à mener de manière intensive des contre-interrogatoires sur des éléments de preuve présentés pour la première fois oralement à titre de témoignage principal. Si le proposant avait le début de l'audience, le temps requis aurait été beaucoup plus court.

Par conséquent, la Commission mixte a jugé que les données reliées aux demandes, accumulées au cours des 40 jours d'audience, pourraient être assimilées rapidement par une autre commission mixte si le dossier était préparé adéquatement et soumis à l'avance.

La Commission a conclu que la manière la plus équitable de traiter les demandes consisterait à les transmettre à une autre commission mixte. Cette décision comportait toutefois deux conditions :

1. la demande ne sera renouvelée que si le proposant est en mesure de soumettre sa demande avec toute la documentation requise;
2. la demande ne sera par renouvelée avant que la demande de la municipalité régionale de York visant l'agrandissement du lieu d'enfouissement de Keele Valley n'ait été soumise au ministère de l'Environnement ou bien abandonnée.

La Commission mixte a émis sa décision relative à l'adjudication des dépens pour ce dossier le 10 septembre 1990.

Le proposant, la communauté urbaine de Toronto, a demandé une révision judiciaire de la décision de la Commission mixte.



Les deux cas suivants, la proposition de lotissement *Entillac* et celle qui visait une carrière d'argile à Avondale North, ont fait l'objet d'une décision au cours de la dernière année. Elles révèlent à quel point il est important pour les promoteurs d'être bien préparés avant le début de l'audience. Les commissions d'audience ont jugé que, dans ces cas, les promoteurs n'étaient pas suffisamment préparés. Par conséquent, l'une des demandes a été rejetée, l'autre sera traitée par une autre commission mixte à certaines conditions.

LA DÉCISION RELATIVE AU PROJET DE LOTISSEMENT ENTERAC

Un promoteur du secteur privé proposait le lotissement de 73 unités dans le secteur adjacent au village de Belfountain dans la municipalité de Caledon. Étant donné que le lotissement devait être situé dans un secteur visé par le Plan de l'escarpement du Niagara, le promoteur a fait une demande de permis auprès de la Commission de l'escarpement du Niagara. La demande a été rejetée. Le promoteur en a appelé de cette décision et le dossier a été soumis à la Commission des évaluations environnementales. Étant donné qu'un règlement de zonage était déjà porté en appel, la question a été soumise à une commission mixte composée de membres de la Commission des Affaires municipales de l'Ontario et de la Commission des évaluations environnementales, conformément à la Loi de 1981 sur la jonction des audiences.

Au terme de la présentation du promoteur, il a été proposé de rejeter la demande avant même d'entendre la preuve des parties opposées, étant donné que la proposition semblait se modifier de jour en jour. La Commission a adopté cette proposition et maintenu la décision de la Commission de l'escarpement du Niagara. Elle a d'ailleurs noté que huit modifications avaient été présentées à la Commission [en 18 jours de témoignages et

incluaient] un concept modifié, que l'on demandait à la Commission d'accepter, à titre de demande... du promoteur. [La Commission était convaincue qu'il y avait suffisamment d'éléments de preuve pour rejeter la demande] compte tenu du caractère prématuré de la demande, du manque d'uniformité des principaux éléments de preuve et des documents incomplets. La Commission était persuadée que les autres naturelles le long de l'escarpement devaient être à l'abri des projets de lotissement comme celui qui était soumis. Fait intéressant, le promoteur reconnaissait la nécessité de tenter d'assurer un développement qui ménage l'environnement de façon durable, ce qui pourrait refléter un changement d'attitude positif.

LA PROPOSITION VISANT LA CARRIÈRE D'ARGILE D'AVONDALE NORTH

Une demande a été présentée par la communauté urbaine de Toronto (CUT), conformément à la Loi sur la jonction des audiences, afin d'obtenir les autorisations nécessaires pour ouvrir une carrière d'argile à ciel ouvert — connue sous le nom de carrière d'argile d'Avondale North — dans la ville de Vaughan. La carrière devait fournir les sous-couches et le matériel de couverture destinés au lieu d'enfouissement de Keele Valley. En mai 1990, après 40 jours d'audience, la Commission mixte a transmis le dossier à une autre commission mixte, conformément aux dispositions contenues dans les alinéas 5(3)a) et 5(4)a) de la Loi sur la jonction des audiences.

Les éléments de preuve ont été présentés par étapes : le proposant témoignait d'abord sur un sujet précis, puis les autres parties se faisaient entendre sur le même sujet. L'objet de la première partie de la preuve était décrit comme suit : « (1) identification des objectifs du promoteur et (2) sols ». On y a présenté en effet l'historique du lieu d'enfouissement, les conditions dont sont assortis les certificats

ET DE LA DEMANDE D'ONTARIO HYDRO

En 1989, *Ontario Hydro* a publié une série de rapports regroupés sous le titre de *Pour un équilibre énergétique : l'offre et de la demande d'électricité*. Les rapports contiennent des plans à long terme sur les services publics visant à fournir de l'énergie électrique à la population de l'Ontario. Le 8 novembre 1989, le ministre de l'Énergie a annoncé que ce plan, connu sous le nom de Plan de l'offre et de la demande, ferait l'objet d'un examen et d'une audience publique, comme le prévoit la Loi sur les évaluations environnementales. Le Comité chargé de tenir l'audience est formé d'Edward Saunders, juge de la Cour de justice de l'Ontario, de Grace Patterson, présidente de la Commission des évaluations environnementales, et de George Connell, recteur sortant de l'Université de Toronto. Plus de 200 personnes et groupes participent à l'audience. Une fois le statut de partie accordé, un comité d'aide financière dirigé par Mary Munro, membre de la Commission, a examiné les demandes soumises par 36 intervenants. Ces demandes totalisaient plus de 60 millions de dollars. Le comité a accordé une aide financière s'élevant à plus de 21 millions de dollars. Les fonds servent à embaucher des avocats et des agents de gestion des cas, à retenir les services d'experts pour examiner les preuves d'*Ontario Hydro*, à fournir des preuves au nom des parties et à couvrir les dépenses admissibles.

En raison du grand nombre de parties en cause, de l'intérêt manifesté par le public et de la nature technique d'une bonne partie de la preuve, des techniques ont été mises au point pour communiquer l'information relative à ce cas difficile. En fait, des règles spéciales ont été établies pour assurer la circulation de l'imposante masse d'information liée à cette proposition.

Des réunions avec les parties en cause ont été tenues afin de discuter de la manière de traiter cette information et d'assurer la recherche des transcriptions et l'accès du public aux dossiers sur les lieux de l'audience et dans les centres régionaux de toute la province. Le comité a aussi ébauché des règles de

procédures avant de les publier à titre de supplément aux règles actuelles contenues dans le Règlement intérieur de la Commission.

Selon le processus adopté, les questions destinées aux comités de témoins à venir seront posées à des dates ultérieures; on peut juger de l'énormité de la tâche en considérant que plus de 5 000 questions ont été posées dans le cadre d'interrogatoires qui ont eu lieu avant même que le comité ne commence à entendre les dépositions.

Une grande partie de la documentation du processus a déjà été soumise et, après l'avoir examinée, le comité a demandé à *Ontario Hydro* de ne présenter qu'un aperçu des dépositions de chaque comité de témoins et le nombre d'heures – habituellement moins de dix – prévu pour chacune.

L'importance des témoignages qui doivent être entendus et le contre-interrogatoire nécessaire seront déterminés une fois que les exposés des préoccupations et des faits auront été transmis aux parties intéressées à un comité de témoins particulier. Il devra en résulter de courtes rencontres visant à approuver les ententes qui auront été négociées.

L'ordre des contre-interrogatoires est établi, dans la mesure du possible, après une entente préalable entre les parties. Les membres du comité communiqueront régulièrement avec les parties et les participants, pour les tenir informés de l'état de l'audience et des questions qui s'y rattachent.

Cette communication s'établira notamment au moyen d'un envoi postal hebdomadaire. De plus, le public aura accès à un numéro sans frais qui diffusera chaque jour un message faisant le point sur les progrès de l'audience.

Au cours des prochains mois, *Ontario Hydro* présentera ses éléments de preuve par le biais de ses comités d'experts témoins. Une fois que le contre-interrogatoire de ces comités sera terminé, les autres parties pourront présenter leurs propres arguments et, en retour, elles seront sujettes à un contre-interrogatoire de la part d'*Ontario Hydro* et des autres parties.

Il s'agit d'un dossier fort complexe et les résultats du processus seront déterminants pour l'avenir économique et énergétique de l'Ontario.

L'AUDIENCE DE LA SOCIÉTÉ ONTARIO-ENNE DE GESTION DES DÉCHETS

La Société ontarienne de gestion des déchets (SOCGD) a demandé l'autorisation de construire et d'assurer le fonctionnement d'un vaste centre de traitement et d'élimination des déchets dangereux à Lincoln-Ouest (municipalité régionale du Niagara). Les installations accueilleraient des déchets provenant de toutes les régions de la province. La demande suppose aussi l'autorisation d'un processus de planification pour la collecte des déchets dangereux et des stations de transit réparties dans toute la province, si de telles stations s'avéraient nécessaires. Le dossier a été soumis à une commission mixte conformément à la Loi de 1981 sur la jonction des audiences. Cette commission comprend un membre de la Commission des affaires municipales de l'Ontario et deux membres de la Commission des évaluations environnementales.

L'audience a été divisée en étapes afin de permettre à la Commission d'examiner en une seule fois tous les éléments de preuve liés à des questions moins connues. Ces questions comprennent le bien-fondé de telles installations, les solutions de rechange, le choix de l'emplacement, la conception et l'impact que le centre aurait sur la région.

À ce jour, la Commission a entendu les témoignages concernant le bien-fondé du centre et les solutions de rechange.

À la fin de cette première étape, certaines parties ont présenté une motion voulant que la Commission rejette la demande, elles considéraient que le promoteur n'avait pas satisfait aux exigences de la Loi sur les évaluations environnementales. Après avoir entendu les témoignages, la Commission a conclu que le rejet de la demande n'était pas justifié.

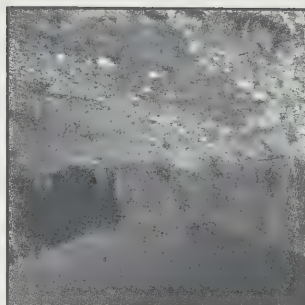
Parallèlement, le ministère de l'Environnement a présenté une motion demandant à la Commission de statuer sur la nécessité d'aménager des installations de traitement et d'élimination des déchets dangereux à d'autres endroits. La Commission a jugé que, compte tenu des éléments de preuve soumis, le besoin était réel.

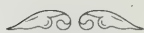
Ontario, du Temiskaming Environmental Action Committee et du Wildlands League, qui était tous opposés à la demande, a terminé sa présentation, après avoir fait témoigner 20 témoins au cours de 62 jours d'audience. Le comité a aussi entendu les présentations de la Northwestern Ontario Associated Chambers of Commerce, des municipalités de Ear Falls, de Golden et de Red Lake, ainsi que de la Northwestern Ontario Municipal Association, de la Canadian Association of Professional Heritage Consultants et de l'Ontario Professional Foresters Association.

D'importantes consultations menées auprès des personnes qui vivent et qui travaillent dans le nord de l'Ontario ont exercé une influence sur l'audience. Des assemblées publiques ont été organisées à Sault Ste. Marie, à Espanola, à Timmins, à Hearst et à Geraldton en août et en septembre 1990. La Commission des évaluations environnementales s'était assurée le concours d'interprètes de conférence conformément à la Loi sur les services en français, une initiative qui a été bien accueillie par la population de ces municipalités.

Le comité d'audience tient des réunions informelles en vue de connaître un vaste éventail d'intérêts incluant : les collectivités autochtones, les bûcherons, les exploitants touristiques, les pêcheurs, les chasseurs, les trappeurs, les arboriculteurs, les représentants des municipalités, les prospecteurs miniers, les propriétaires de chalets, les travailleurs et les gestionnaires syndiqués, les naturalistes, les camionneurs, les propriétaires de petites entreprises et les scientifiques.

Selon le comité, l'audience sur la gestion forestière devrait se terminer en décembre 1992.





portant sur le Plan de l'offre et de la demande d'Ontario Hydro. Les initiatives touchaient deux aspects liés à l'information : définir les principales questions et se concentrer sur elles, tout en assurant l'accès du public à l'information entourant l'audience.

Dans le cas de ces importantes (et inévitablement longues) audiences, nous prenons des dispositions afin de prévoir les problèmes et nous tentons de raccourcir les audiences tout en respectant nos normes de fonctionnement. Toutes les parties en cause sont d'accord pour dire qu'il est possible d'apporter des améliorations : la Commission pourrait être plus sévère quant à la durée maximale des présentations orales et aux délais de soumission des documents, les promoteurs pourraient améliorer leurs présentations, les organismes publics pourraient collaborer les uns avec les autres pour éviter les problèmes au cours du processus, et le public pourrait mieux reconnaître les forces et les faiblesses du processus d'évaluation environnementale.

L'AUDIENCE SUR LA GESTION DU BOIS D'OEUVRE

Au cours de la dernière année, deux importants intervenants ont terminé leurs présentations dans le cadre des audiences de la Commission portant sur l'évaluation environnementale de portée générale de la gestion du bois d'oeuvre sur les terres de la Couronne en Ontario commandée par le ministère des Richesses naturelles. L'Ontario Forest Industries Association et l'Association des manufacturiers de bois de sciage de l'Ontario, qui appuyaient la demande du Ministère, ont fait entendre 50 témoins au cours de 44 jours d'audience. Forest for Tomorrow, une coalition formée du Botany Conservation Group de l'Université de Toronto, de la Federation of Ontario Naturalists, du Sierra Club of

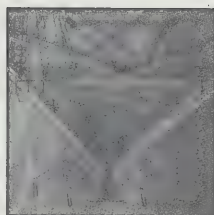
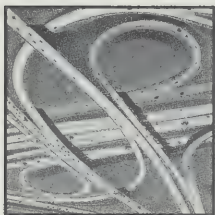
Depuis 10 ans, les gouvernements ontariens reconnaissent que les nouvelles politiques et les propositions de programmes d'envergure doivent faire l'objet d'une évaluation environnementale. C'est là l'un des plus importants changements d'attitude à survenir au cours de la dernière décennie. Ce changement a été bien accueilli par le public en général, mais il a soulevé de nombreuses questions relativement à la durée et au coût des audiences, questions auxquelles il faudra apporter des réponses.

Examinons trois importantes audiences actuellement en cours devant la Commission. Elles découlent des objectifs d'un programme provincial, et le gouvernement de l'Ontario ou une société d'Etat est le proposant : la gestion du bois d'oeuvre, la Société ontarienne de gestion des déchets et le Plan de l'offre et de la demande d'Ontario Hydro.

Dans le passé, on craignait qu'un «David» (l'intervenant) ne se mesure à un «Goliath» (le proposant). Actuellement, toutefois, les promoteurs craignent que l'aide financière aux intervenants rende le processus trop coûteux et trop long, et que leurs chances de succès s'en trouvent réduites. La Commission voit le nombre d'audiences augmenter, non seulement parce qu'il y a au départ des comités pour entendre les demandes d'aide financière aux intervenants, mais aussi parce que les demandes de financement supplémentaires doivent être traitées par le comité d'audience au cours de l'audience principale. De plus, l'administration du financement est en soi complexe et elle exige beaucoup de temps.

En raison de la complexité des questions et du grand nombre de parties en cause, le résultat des principales audiences dépend de l'utilisation efficace des ressources. La manière dont la Commission a répondu à ce besoin est bien illustrée par l'audience

EXAMEN DU PROCESSUS D'ÉVALUATION ENVIRONNEMENTALE : PRÉPARER L'AVENIR



Le public est de plus en plus conscient de l'importance des enjeux environnementaux et cherche chaque jour davantage à jouer un rôle dans la prise de décisions touchant l'environnement. Dans ces conditions, le processus d'évaluation environnementale a acquis une grande importance et doit maintenant faire lui-même l'objet d'un examen.

Pour ce faire, le ministre de l'Environnement a créé en 1989 un groupe de travail sur les évaluations environnementales. Le groupe a rendu public un document de travail, intitulé *Vers l'amélioration du Programme d'évaluation environnementale de l'Ontario*, qui a été transmis par le ministre de l'Environnement au Comité consultatif des évaluations environnementales. Le comité a reçu le mandat de tenir des consultations publiques sur la question. Ses recommandations feront partie des modifications apportées à la Loi sur les évaluations environnementales, attendues d'ici la fin de 1991.

La Commission a pris part à ce processus de consultation en préparant un ouvrage intitulé *Le processus d'instruction : documents de travail concernant une modification des procédures et des textes de loi*, qu'elle a diffusé largement auprès des groupes constitués de membres du public, d'avocats et d'experts. À partir des réactions obtenues, la Commission a présenté ses recommandations dans un rapport qui a été soumis au Comité consultatif sur les évaluations environnementales. Le rapport s'intéresse notamment aux questions suivantes : les programmes et les plans qui devraient

être soumis au processus d'évaluation environnementale, les critères qui seront utilisés, de même que les modifications à apporter aux audiences tenues par la Commission, étant donné la complexité croissante des programmes et des plans évalués.

L'expérience de la Commission, qui tient des audiences depuis dix ans, montre que plus l'évaluation est complexe, plus il importe d'adopter la formule de l'enquête pour satisfaire à la fois les intérêts du public et le besoin d'information de la Commission. Toutefois, le recours de plus en plus fréquent à des consultants juridiques pour représenter divers intérêts dans le cadre des audiences favorise la formule de l'opposition. Pour faire face à ce changement, la Commission a affiné son système de gestion des cas, en traitant chacun selon ses propres caractéristiques, plutôt qu'en adoptant une méthode prédéterminée. Suivant la recommandation du groupe de travail, la Commission a déjà accepté de tenir une audience sans formalisme qui permettra à toutes les parties intéressées d'élaborer des lignes directrices grâce auxquelles le Ministère pourra donner des orientations aux proposants, aux intervenants et à la Commission elle-même. Ces lignes directrices porteront notamment sur l'utilisation des données scientifiques et sur le traitement différent à réserver à l'évaluation d'un plan, par rapport à celle d'un projet. La Commission espère également que l'examen en cours clarifiera le rôle que l'évaluation environnementale devrait jouer dans les politiques gouvernementales.

Le tableau présente les quatre éléments principaux des lois en vertu desquelles la Commission peut tenir des audiences.

LA LOI		JURIDICITION	
ET SON BUT	INITIATIVE	AUDIENCES	POUVOIR DE LA COMMISSION
<p>Évaluations</p> <ul style="list-style-type: none">• Ministère de l'Environnement, répondant au <p>«protection, conservation, gestion, avisée»</p>	<p>(articles 12 et 13)</p> <p>ministre le juge opportun</p> <p>Secteur privé, si désigné</p> <p>Secteur public, si désigné</p>	<p>«Entreprise» – projet, plan</p> <p>Accepter ou modifier les EE. Approuver,</p> <p>Dans un délai de 28 jours,</p> <p>au ministre, soumis à la</p> <p>décision du Cabinet</p> <p>(articles 23 et 14)</p> <p>Révision judiciaire</p> <p>(common law)</p>	<p>La Commission établit son propre règlement intérieur</p> <p>(paragraphe 18(12))</p>
<p>Protection de l'environnement</p> <p>«la protection et la conservation de l'environnement naturel»</p>	<ul style="list-style-type: none">• Directeur des sations – ministère de l'Environnement, obligation, obligation, attributionnelles à des contaminants des récoltes, du bétail (article 134)	<ul style="list-style-type: none">• Obligation, pour décharges de superficie• Obligation, pour décharges dans une municipalité qui n'est pas aussi la requérante, et pour demandes relatives aux services publics d'eau et travaux d'égouts dans la municipalité du requérant	<ul style="list-style-type: none">• La Commission émet un avis public, s'il n'y a pas d'objections, l'audience n'est pas nécessaire• La décision est appliquée par le directeur sauf s'il y a appel (paragraphe 6(4) et alinéa 6a).
<p>Ressources en eau de l'Ontario</p> <p>donne au ministre de l'Environnement le pouvoir d'aménager et de réglementer les réseaux d'eau et d'égouts</p>	<ul style="list-style-type: none">• Directeur des autorisations – ministère de l'Environnement, obligation ou discrétionnaire (paragraphe 25(1), 26(1), 43(4))	<ul style="list-style-type: none">• Discrétionnaire, pour travaux d'égouts dans la municipalité du requérant	<ul style="list-style-type: none">• La Commission émet un avis public, s'il n'y a pas d'objections, l'audience n'est pas nécessaire• La décision est appliquée par le directeur sauf s'il y a appel (paragraphe 6(4) et alinéa 6a).
<p>Fonction des audiences</p> <p>pour les entreprises requérant plus d'une audience</p>	<ul style="list-style-type: none">• Promoteur par le biais de l'avis du greffier d'audience, de sa propre initiative (articles 3 et 4)	<ul style="list-style-type: none">• Entreprises, en vertu de 12	<ul style="list-style-type: none">• Décision de la Commission mixte en vigueur, sauf si portée en appel devant le Cabinet• La Commission détermine son propre règlement intérieur (article 7)• Peut adjuger des dépens
<p>Aide financière aux intervenants</p> <p>«un projet pilote» d'aide financière aux intervenants pour les débats de la Commission</p>	<ul style="list-style-type: none">• Parties ayant le statut d'intervenant, pour les audiences devant la CEE, la Commission de l'énergie de l'Ontario ou une commission mixte, en faisant une demande à la Commission (article 3)	<ul style="list-style-type: none">• Propositions de financement pour les questions touchant (i) une importante partie du public, et (ii) l'intérêt public et non seulement des intérêts privés	<ul style="list-style-type: none">• Déterminer le promoteur tenu d'accorder du financement• Refuser ou accorder le financement• Superviser et assurer l'application des «conditions de financement»
<p>Enquêtes publiques</p> <p>Par décret</p>	<p>Questions touchant la bonne administration de l'Ontario, comme enquêteurs, etc.</p> <p>La Commission émet un rapport</p>	<p>Questions touchant la bonne administration de l'Ontario, comme enquêteurs, etc.</p> <p>La Commission émet un rapport</p>	<p>Questions touchant la bonne administration de l'Ontario, comme enquêteurs, etc.</p> <p>La Commission émet un rapport</p>



ESTHER JACKO



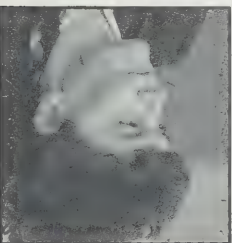
JOHN MCCLELLAN



RICHARD PHARAND



ALAN WILLIAM ROY



ELAINE B. TRACEY

ESTHER JACKO a été nommée à la Commission en avril 1989. À titre de membre à temps partiel, elle représente Birch Island. Mme Jacko est gestionnaire des terres du Conseil de la première nation de Whitefish River. Elle a été porte-parole des autochtones pour l'Algonquin-Manitowlin Nuclear Awareness Group et elle est membre de la North Channel Preservation Society, qui s'emploie à conserver l'intégrité historique et environnementale de Nehahpukung, aussi appelée Casson's Peak, à Bate Fine. Elle est actuellement membre du Conseil canadien de la recherche sur les évaluations environnementales.

JOHN MCCLELLAN, de Brantford, est membre à temps partiel de la Commission. Géographe de profession, il travaille au dossier de l'aménagement du territoire depuis 30 ans. De 1974 à 1988, il a été directeur général de la Commission de l'aménagement du territoire de l'Île du Prince-Édouard. Depuis 1989, il est agent d'audiences en vertu de la Loi sur la planification, l'aménagement de l'escarpement du Niagara. Il est devenu membre de la Commission le 1^{er} janvier 1991.

RICHARD PHARAND est membre à temps partiel de la Commission depuis le 14 avril 1986. Avocat bilingue

et associé principal de l'étude Pharand Kuyek de Sudbury, M. Pharand est aussi membre de l'Advocates' Society of Ontario et directeur de l'Aide juridique pour les districts de Sudbury et de Manitoulin. ALAN WILLIAM ROY, membre à temps partiel de la Commission, est diplômé en sciences de l'Université Sir George Williams et de l'Université Queen's. M. Roy a une vaste expérience scientifique dans le domaine de la protection des pêches. Résident de Brighton, il est actuellement directeur de l'environnement pour l'Union des Indiens de l'Ontario. Il a été nommé à la Commission en avril 1987.

ELAINE B. TRACEY est membre à temps partiel de la Commission depuis octobre 1987. Elle a participé à des activités environnementales à Eganville et elle a dirigé un comité dont l'objectif était de nettoyer les rives du cours d'eau local. Elle est actuellement directrice de la Valley Savings Credit Union (comité de Renfrew) et présidente sortante de l'Association commerciale régionale d'Eganville. Mme Tracey a été désignée personnalité du monde des affaires de l'année. Elle travaille actuellement à temps partiel dans une entreprise de presse familiale.



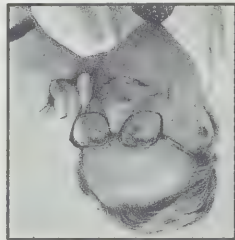
LE JUGE
EDWARD SAUNDERS



GEORGE CONNELL



KATE DAVIES



JOHN DUNCANSON



PAUL F. J. EAGLES

LE JUGE EDWARD SAUNDERS a été nommé à la Commission en mai 1990 à titre de président de l'audience sur le Plan de l'offre et de la demande d'Ontario Hydro. Au cours des 13 dernières années, il a fait partie de la Cour de justice de l'Ontario (anciennement la Cour suprême de l'Ontario). Auparavant, il a exercé le droit à Toronto. M. Saunders est diplômé de l'Université de Toronto et d'Osgoode Hall.

GEORGE CONNELL, de Toronto, est membre à temps partiel de la Commission depuis janvier 1990. Il a déjà été recteur de l'Université de Western Ontario et de l'Université de Toronto. Officier de l'Ordre du Canada et membre associé de la Société royale du Canada, il fait aussi partie de diverses sociétés professionnelles, comme la Société canadienne de biochimie, dont il a été président en 1973-1974, l'*American Society of Biological Chemists* et la Société canadienne d'immunologie. M. Connell préside actuellement la Table ronde nationale sur l'environnement et l'économie. KATE DAVIES, d'Ottawa, est membre à temps partiel de la Commission depuis juillet 1990. Elle détient un doctorat en biochimie de l'Université d'Oxford, et avant sa nomination, elle a été gestionnaire de l'Office de la protection de l'environnement de Toronto. Elle a aussi travaillé au Conseil consultatif scientifique de la

Commission mixte internationale et au Conseil canadien de la recherche sur les évaluations environnementales. Mme Davies est actuellement présidente de la firme *Ecosystems Consulting Inc.* JOHN DUNCANSON, d'Orangeville, est membre à temps partiel de la Commission. Il a obtenu un baccalauréat en arts de l'Université de Toronto en 1947 et un certificat en affaires en 1968. Il a occupé diverses fonctions à Bell Canada de 1947 à 1969 et il a été directeur du Département des affaires des anciens à l'Université de Toronto de 1969 à 1974. En 1975, il a été nommé agent d'audiences en vertu de la Loi sur la planification et l'aménagement de l'*escarpement du Niagara*, puis il est devenu membre de la Commission le 1^{er} janvier 1991.

PAUL F. J. EAGLES, de Cambridge, est membre à temps partiel de la Commission depuis décembre 1987. M. Eagles détient un baccalauréat de l'Université de Waterloo et une maîtrise en zoologie et en mise en valeur des ressources de l'Université de Guelph, ainsi qu'un doctorat en aménagement urbain et régional de l'Université de Waterloo. À l'heure actuelle, il est professeur au Département d'études des loisirs à l'Université de Waterloo. M. Eagles a publié de nombreux ouvrages sur l'écologie appliquée, la gestion des ressources et les loisirs de plein air.



ANNE KOVEN



ALAN D. LEVY



ELIE W. MARTEL



MARY G. MUNRO



JIM ROBB

ANNE KOVEN est vice-présidente à plein temps. Nommée à la Commission en avril 1987, Mme Koven détient une maîtrise en administration publique de l'Université Queen's. De 1981 à 1986, elle a été directrice des recherches pour l'étude sur le site d'enfouissement sanitaire du Haut-Ottawa commandée par le ministère de la Santé de l'Ontario. Elle a travaillé dans l'industrie minière et auprès du Conseil consultatif sur la santé et la sécurité au travail de l'Ontario.

ALAN D. LEVY est vice-président à plein temps. Nommé à la Commission en mai 1990, il détient un baccalauréat en droit et un baccalauréat en droit réat des arts et un baccalauréat en droit de l'Université de Toronto. Pendant 18 ans, il a pratiqué le droit du Contentieux, comparaisant à titre d'avocat devant les cours et les tribunaux. M. Levy est l'un des fondateurs de l'Association canadienne du droit de l'environnement. Il a fait partie du conseil d'administration de l'organisme pendant 20 ans, soit jusqu'au moment d'être nommé à la Commission.

ELIE W. MARTEL est vice-président à plein temps. M. Martel était enseignant et directeur d'une école primaire à Capreol avant 1967, année où il a été élu à l'Assemblée législative. M. Martel a été député néo-démocrate de Sudbury-Est jusqu'en 1987 et il a été leader parlementaire de son parti de 1978 à 1985. À titre de

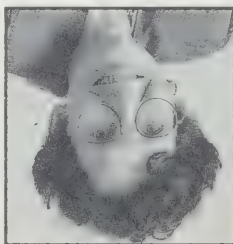
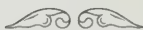
député, il a accordé considérablement d'importance aux questions environnementales. M. Martel est l'auteur de deux importants rapports sur la santé et la sécurité au travail. Il a été nommé à la Commission en mars 1988.

MARY G. MUNRO, de Burlington, est vice-présidente générale à plein temps. Elle est infirmière diplômée, joue un rôle actif dans les questions communautaires et environnementales depuis de nombreuses années et a siégé à divers conseils et commissions. Mme Munro a été conseillère municipale, conseillère régionale et maire de la ville de Burlington. Elle a été nommée à la Commission le 1^{er} septembre 1981.

JIM ROBB, de Scarborough, est vice-président à plein temps. Il détient un baccalauréat en sciences, un diplôme en foresterie et une licence de pilote commerciale. Avant d'être nommé à la Commission, en septembre 1990, M. Robb possédait et gérât une entreprise d'entretien des arbres en milieu urbain. Il a également assuré la présidence du mouvement *Save the Rouge Valley System*, ce qui lui a permis de s'intéresser aux questions relatives à la conservation de bassins hydrographiques. M. Robb a été rédacteur pour le compte de nombreuses publications et, à titre de photographe, il a réalisé la couverture du second rapport provisoire de la Commission royale sur l'avenir du secteur riverain de Toronto, lequel était intitulé

Un point tournant.

LES MEMBRES DE LA COMMISSION



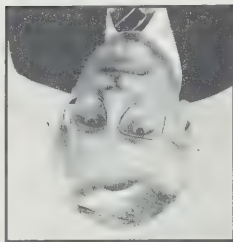
GRACE PATTERSON



BARBARA DOHERTY



LEN GERTLER



JIM KINGHAM

GRACE PATTERSON est présidente de la Commission des évaluations environnementales depuis février 1990. De 1986 à 1990, elle en a été vice-présidente et, auparavant, elle a pratiqué le droit de l'environnement pour le compte de l'Association canadienne du droit de l'environnement. Elle a aussi été administratrice de plusieurs organismes de défense de l'environnement et a siégé au Comité consultatif des sciences de la Commission mixte internationale de même qu'au Conseil canadien de la recherche sur les évaluations environnementales. Mme Patterson a aussi été maître de conférence en matière de droit de l'environnement à la Faculté de droit de l'Université Queen's.

BARBARA DOHERTY, de Toronto, est vice-présidente à plein temps depuis novembre 1988. Elle a obtenu son baccalauréat en sciences de l'Université de Western Ontario en 1977 et son diplôme en droit d'Osgoode Hall en 1980. Elle a été admise au barreau en 1982. Mme Doherty a exercé le droit civil à Toronto et a comparu à titre d'avocate devant un large éventail de tribunaux judiciaires et de tribunaux administratifs jusqu'à sa nomination à la Commission.

LEN GERTLER est vice-président à plein temps. Avant de se joindre à la Commission en septembre 1990, il était professeur à l'École de planification urbaine et régionale à la Faculté des études environnementales de l'Université de Waterloo. Il est membre associé de l'Institut canadien des urbanistes et il fait partie du conseil d'administration du Conseil du Com-monwealth pour l'écologie humaine. Il a mis à profit ses connaissances en matière de planification, d'aménagement et de gestion de l'environnement tant dans le contexte urbain que régional, et il a publié de nombreux ouvrages sur ces questions.

JIM KINGHAM est vice-président à plein temps. Il travaille dans le domaine de la gestion de l'environnement depuis plus de vingt ans. Au départ, il a travaillé en qualité de chercheur scientifique puis à titre de gestionnaire. Il a été négociateur des dispositions du droit de la mer relatives à l'environnement marin, tout en présidant le Groupe de travail antipollution de l'Organisation internationale de l'environnement. Avant de se joindre à la Commission, M. Kingham a été directeur général de la Région de l'Ontario à l'Environnement Canada et président canadien du Conseil de la qualité de l'eau de la Commission mixte internationale.

diminuer encore leur qualité de vie ou entraîner la dégradation du milieu naturel.

En facilitant la participation du public au processus de planification et de prise-de-décisions, la Loi sur les évaluations environnementales a fait en sorte que l'évolution des valeurs de la population se traduise par des stratégies de gestion des déchets. En contribuant au processus d'évaluation environnementale, les gens adoptent des valeurs environnementales qui les obligent à repenser leur style de vie et leurs attitudes et qui favorisent l'adoption des principes du développement durable.

L'aide financière accordée aux intervenants facilite l'accès du public aux audiences. Elle permet aux gens d'exprimer plus efficacement leurs préoccupations environnementales et aux intervenants d'acquiescer aux connaissances et l'expertise nécessaires pour formuler des solutions novatrices aux problèmes environnementaux.

Pour atteindre ces objectifs, il faudra peut-être dépenser des sommes importantes, mais il ne faut pas perdre de vue le mérite des projets qui sont évalués et l'importance de minimiser les répercussions néfastes qu'ils peuvent avoir sur l'environnement.

Les principes de développement durable et de planification de l'écosystème ne mènent pas très loin à l'heure actuelle — tout au plus sont-ils des énoncés de

déchets illustre l'influence positive que le processus d'évaluation environnementale et les audiences de la Commission des évaluations environnementales peuvent avoir sur la planification et la protection de l'environnement. En clair, cela signifie que des progrès sont accomplis dans cette difficile tâche qui consiste à concilier les intérêts et les valeurs parfois contradictoires du public et des citoyens.

Quand la Loi a été adoptée il y a 15 ans, des concepts comme la réduction, la réutilisation et le recyclage étaient jugés peu pratiques, peu économiques et superflus — bref comme le fruit de la complaisance idéaliste des défenseurs de l'environnement.

Pourtant, ces trois « R » font maintenant partie du vocabulaire et du quotidien des citoyens et des entreprises. Un autre « R » est même venu s'ajouter aux trois autres : le rejet — soit le rejet des produits munis d'un emballage superflu et des produits non recyclables.

Au fur et à mesure que l'air sain, l'eau potable, les terres arables et les espaces verts sont menacés, le public devient plus conscient de leur valeur. Les gens sont donc moins tolérants à l'égard des activités qui pourraient

bonnes intentions. Pour être efficaces, ils doivent être intégrés à l'aménagement du territoire, à la gestion des ressources et à la protection de l'environnement. Leur application en vertu du programme d'évaluation environnementale contribuera au traitement de questions importantes, telles que la conservation des ressources, l'effet cumulatif des actions et des décisions, le seuil de tolérance de l'environnement, la qualité de la vie et les répercussions sur les collectivités autochtones.

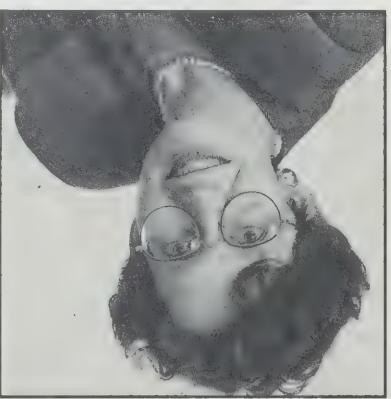
La Commission des évaluations environnementales prend actuellement des dispositions pour rendre le processus d'audience plus accessible, plus économique, plus efficace et plus efficient. Parallèlement, nous continuerons de tenter de prendre des décisions qui contribueront à protéger l'environnement, à promouvoir les activités humaines à long terme et à respecter les intérêts des générations actuelles et à venir.

LA PRÉSIDENTE,

GRACE PATTERSON

Grace Patterson

développement ménageant l'environnement de façon durable. Des initiatives comme les plans directeurs de gestion des déchets, le plan de gestion du bois d'oeuvre sur les terres de la Couronne du ministère des Richesses naturelles, le Plan de l'offre et de la demande d'Ontario Hydro, qui porte sur les perspectives en matière d'électricité au cours des 25 prochaines années, le plan touchant les installations de traitement et d'élimination des déchets dangereux de la Société ontarienne de gestion des déchets et divers autres projets et propositions sont actuellement étudiés publiquement dans le cadre du processus d'évaluation environnementale et des audiences de la Commission. La Commission possède plus d'une décennie d'expérience en matière d'évaluation environnementale, ce qui lui permet de comprendre l'évolution du rôle de l'évaluation dans la planification et la protection de l'environnement. Pendant cette période, le processus d'évaluation a permis de canaliser l'insatisfaction croissante du public à l'égard de l'état de l'environnement. Par conséquent, le rôle de l'évaluation environnementale s'est étendu de manière à répondre aux attentes du public, qui souhaite jouer un rôle significatif dans la prise de décisions relatives à la protection



LA PRÉSIDENTE
GRACE PATTERSON

et à la planification de l'environnement. Même si le processus d'évaluation environnementale a incité le public à participer à la planification environnementale, on lui a reproché d'être trop coûteux, de prendre trop de temps et d'être trop complexe. Le processus d'évaluation environnementale de même que la législation à laquelle il est assujéti sont actuellement à l'étude - c'est là un moment décisif de leur existence. Si l'application de la Loi doit être plus vaste, le processus doit, pour sa part, être plus efficace. Il est possible de mener les opérations de manière plus efficace : par exemple, les modifications apportées à la Loi pour raient renforcer et clarifier le rôle de l'évaluation environnementale en tant que processus de planification, des dispositions visant à améliorer les consultations publiques faciliteraient une participation significative du public à toutes les étapes du processus, l'élaboration de lignes directrices de base et de principes généraux fournirait une orientation claire aux proposants, une répartition stratégique des ressources

améliorerait la coordination du processus de planification publique et d'examen gouvernemental. Ces améliorations et bien d'autres encore sont attendues au terme de la révision du processus, qui s'est déroulée sur une période de trois ans et dont l'issue est prévue prochainement. La manière de mener les audiences est aussi en évolution. La Commission des évaluations environnementales a récemment organisé des tables rondes publiques afin de discuter de nouvelles façons de faciliter la participation du public, tout en continuant de tenir des audiences justes et productives. Les résultats de ces discussions nous ont encouragés à étendre la portée des techniques de gestion des cas de la Commission, ce qui fait maintenant l'objet de discussions. En définitive, la Commission souhaite exercer un contrôle plus grand sur le processus. Étant donné que le public souhaite participer à la planification et à la protection de l'environnement - participer à l'évaluation environnementale dès le début et de manière continue, c'est-à-dire là où elle est la plus constructive et la plus rentable - il faudra investir davantage de ressources dès les premières étapes. L'application de la Loi sur les évaluations environnementales à la planification de la gestion des



ans notre province,



la qualité de la vie et l'avènement de l'économie reposent sur la conservation des ressources et la protection de

l'environnement. Depuis 1987, année de parution de Notre avenir à tous,

le rapport de la Commission mondiale sur l'environnement et le développement (la Commission Brundtland),

la population et les gouvernements sont devenus plus conscients

des liens complexes qui unissent la santé environnementale, la santé économique et la condition humaine.

Aujourd'hui, quatre ans plus tard, les pays du monde entier s'efforcent

toujours de comprendre et d'appliquer le concept du développement économique menageant l'environnement

de façon durable présente pour la première fois dans le rapport.

- L'automne dernier, la Table ronde de l'Ontario sur l'environnement et l'économie a publié un document intitulé *La génération des défis*, qui énonce les principes directeurs visant à mettre en oeuvre le développement durable. Les voici :
 - prévoir et prévenir les problèmes environnementaux;
 - exiger une comptabilité rigoureuse des coûts environnementaux dans les projets d'aménagement;
 - prendre des décisions avisées;
 - conserver notre capital environnemental en vivant des intérêts et non en puisant à même le capital;
 - privilégier la qualité du développement plutôt que la quantité;
 - respecter la nature;
 - respecter les droits des générations à venir.
- Les principes qui sous-tendent l'application actuelle de la Loi sur les évaluations environnementales de l'Ontario coïncident avec ceux qui ont été formulés par les membres de la Table ronde. De plus, en plus, en vertu de la Loi, les programmes d'aménagement, les plans et les projets étudiés par la Commission des évaluations environnementales peuvent être examinés par les membres du public qui demandent que les proposants respectent les principes du

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Pour obtenir des renseignements, veuillez communiquer avec le :
 Secrétaire de la Commission, Commission des évaluations environnementales
 C.P. 2382, 2300, rue Yonge, bureau 1201, Toronto (Ontario) M4P 1E4
 Tél. : (416) 323-4806



Imprimé sur papier recyclé

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Further information available from:

The Board Secretary, Environmental Assessment Board,
P.O. Box 2382, 2300 Yonge Street, Suite 1201, Toronto, Ontario M4P 1E4
Tel: (416) 323-4806



Chair's Message



This past year will be memorable as the one where the recession continued, budget restraints were imposed across government, and economic concerns were on all our minds. Along with the dread of

unemployment and cutbacks was the inescapable realization that the environment and the economy are linked. Without healthy fish stocks or forests, industries depending on these resources will not survive and we will all suffer the consequences. No one can afford environmental destruction.

There is action on environmental protection at home and internationally. The Crombie Royal Commission on the Future of the Toronto Waterfront has confirmed the importance of an ecosystem approach to planning. The practice of EA is changing and improving to accommodate cumulative impacts of projects and better public consultation. The Rio Conference has brought world attention to the issues of biodiversity and global warming. Certainly the broad implications of local environmental degradation are becoming universally accepted.

This year was also, in the Ontario environmental assessment context, a time of impending change. The Ministry's review of the EAA process and legislation is ongoing and amendments to the

legislation are expected in the fall of 1992. The *Intervenor Funding Project Act* is being reviewed, and has been extended for four years from April 1, 1992. The Board is working toward changing our own process, realizing that hearings cannot necessarily go on as long as the parties believe they should.

Nineteen ninety-two should see the conclusion of two major, lengthy hearings — the Ontario Waste Management Corporation's application for approval of hazardous waste treatment and disposal facilities, and the Ministry of Natural Resources' Class EA of timber management on Crown lands in Ontario. The Ontario Hydro Demand/Supply Plan hearing will continue for at least another year. We hope never to have such long hearings in the future.

We are improving the quality of our process and our decisions. We will accomplish these objectives by increasing our control over the hearing process through case management, improved training for members and staff, and use of alternative dispute resolution where appropriate. More specifically, this will involve significant preparation before the evidence is presented, and the deployment of adequate staff resources where necessary.

The Board is experimenting with various measures that do not constitute part of what we have known as the adversarial process in the administrative law context. We are seeking clear statutory authority to order and oversee alternative dispute resolution; to dispense with examination and cross-examination for some parts of hearings so that we can operate more in the mode of a public meeting or public inquiry where appropriate; and to strengthen our ability to conduct our own investigations. The Board seeks to obtain better information faster, but intends neither to side-step issues of concern to the parties involved in our hearings, nor to circumscribe their legitimate right to a hearing, which will always be open and accessible to the public. In fact, we hope that this type of mixed approach to our process, both adversarial and investigative, will make the process more informal, understandable and less legalistic to the average participant.

This Board pays more than lip service to meaningful public participation. At our hearings, we try to solve complaints that individuals and local citizens groups are being squeezed out of the EA process by experts, well-financed proponents and intimidating rules and procedures. Improvements to the pre-hearing stage of the EA process will help citizens become well informed and well prepared at the beginning of an undertaking. The Board has supported the continuation of and

improvements to intervenor funding so that citizens groups can get their evidence before the Board. Members conducting our hearings make every accommodation to give a voice to interested parties through such means as extensive advertising of notices in the media, holding town hall meetings and site visits, providing translation in French and native languages, simplifying the jargon of lawyers and technical consultants and relaxing various hearing procedures that might otherwise make citizens feel like "outsiders" at the hearing. We invite all suggestions for improving public involvement in the EA process.

On a more personal note, Richard Pharand served as a part-time member from 1986 to 1992. His contribution to the Board's work was appreciated by all of his colleagues, and we wish him continued success in his other pursuits.

This Annual Report is shorter and simpler, in keeping with the efforts of our members and staff to cut costs as we work towards delivering better hearings and decisions. Nevertheless, I hope that you will find its contents informative and useful in understanding the work of the Environmental Assessment Board.



Grace Patterson

Members of the Board



Dr. George Connell

DR. GEORGE CONNELL is a part-time Vice-Chair from Toronto, appointed to the Board in January, 1990. He is a former president of the University of Western Ontario and the University of Toronto, an officer of the Order of Canada and a Fellow of the Royal Society of Canada. His memberships in professional societies include the Canadian Biochemical Society (president, 1973-74), the American Society of Biological Chemists and the Canadian Society for Immunology. Dr. Connell chairs the National Round Table on the Environment and the Economy.



Kate Davies

KATE DAVIES is a part-time member from Ottawa, appointed to the Board in July, 1990. She holds a doctorate in Biochemistry from Oxford University in England and prior to her appointment was Manager of the City of Toronto's Environmental Protection Office. She has also had appointments to the International Joint Commission's Science Advisory Board and the Canadian Environmental Assessment Research Council. She is currently the president of Ecosystems Consulting Inc.



Barbara Doherty

BARBARA DOHERTY is a full-time Vice-Chair from Toronto appointed to the Board in November, 1988. She graduated from the University of Western Ontario with a B.Sc. in 1977 and from Osgoode Hall Law School in 1980. She was called to the Bar in 1982. Ms. Doherty practised civil litigation in Toronto and appeared before a wide variety of courts and administrative tribunals until her appointment to the Board.



John Duncanson

JOHN DUNCANSON is a part-time member from Orangeville. Mr. Duncanson obtained a B.A. from the University of Toronto in 1947 and a Business Certificate in 1968. He was employed in various management appointments with Bell Telephone Company from 1947 to 1969, and was the Director of the Department of Alumni Affairs at the University of Toronto from 1969 until 1974. He became a Hearing Officer under the Niagara Escarpment Planning and Development Act in 1975. He was cross-appointed to the Board on January 1, 1991.



Dr. Paul F.J. Eagles

DR. PAUL F.J. EAGLES, is a part-time member from Cambridge, appointed to the Board in December, 1987. Dr. Eagles holds a B.Sc. in Biology from the University of Waterloo, an M.Sc. in Zoology and Resource Development from the University of Guelph and a Ph.D. in Urban and Regional Planning from the University of Waterloo. He is presently a faculty member in the Department of Recreation and Leisure Studies at the University of Waterloo. Dr. Eagles has published extensively on applied ecology, resource management and outdoor recreation.



Len Gertler

LEN GERTLER is a full-time Vice-Chair, appointed to the Board in May, 1990. He is a Professor Emeritus, University of Waterloo, and a Fellow of the Canadian Institute of Planners. He has combined an interest in planning, development, and environmental management in both an urban and regional context, and in Canada and abroad. Foreign assignments have included work in Southeast Asia and the Caribbean for United Nations agencies as well as the Canadian International Development Agency. He is the author and editor of several books on environmental and planning issues. In April 1991, he was cross-appointed to the Ontario Environmental Appeal Board.



Esther Jacko

ESTHER JACKO is a part-time member of the Board from Birch Island, appointed in April 1989. Ms. Jacko is the Lands Manager for the Whitefish River First Nation Council. She served as the native spokesperson for the Algoma-Manitoulin Nuclear Awareness Group. Ms. Jacko is also a member of the North Channel Preservation Society, which is endeavouring to preserve the historical and environmental integrity of Nehahupkung, also known as Casson's Peak, in Baie Fine. She is currently a member of the Canadian Environmental Assessment Research Council.



Jim Kingham

JIM KINGHAM is a full-time Vice-Chair who has been involved in environmental work for 25 years as a scientist, negotiator and manager. He developed the Canadian Ocean Dumping Control Bill, negotiated certain marine environmental protection and technology issues associated with the Law of the Sea and chaired a standing Working Group of the U.N. Maritime Organization. He also developed a federal Environmental Emergency Prevention Program and strategic plans for the clean up of the Great Lakes and for the work of the Environmental Protection Service. Before joining the Board in 1987, Dr. Kingham was the Regional Director-General for the Ontario Region of Environment Canada and was the Canadian Chairman of the IJC Water Quality Board.

Anne Koven



ANNE KOVEN is a full-time Vice-Chair from Toronto. Appointed to the Board in April, 1987, Ms. Koven holds a Masters' degree in Public Administration from Queen's University. She was Research Director of the Upper Ottawa Landfill Site Study, commissioned by the Ontario Ministry of Health, from 1981 to 1986. She has worked in the mining industry and with the Ontario Advisory Council on Occupational Health and Safety.

Alan D. Levy



ALAN D. LEVY is a full-time Vice-Chair from Toronto, appointed to the Board in May, 1990. He holds a B.A. and an LL.B. from the University of Toronto. For 18 years he practised law in the area of litigation, appearing before both courts and tribunals. Mr. Levy was one of the founders of the Canadian Environmental Law Association, and remained a member of its board of directors for 20 years until his appointment. In April 1991, he was cross-appointed as a member of the Ontario Environmental Appeal Board.

Elie W. Martel



ELIE W. MARTEL is a full-time Vice-Chair from Capreol. Mr. Martel was a teacher and elementary school principal prior to 1967 when he was elected to the Legislative Assembly. Mr. Martel served as the NDP member for Sudbury East until 1987 and was House Leader for his party from 1978 to October 1985. As a member he did extensive work on environmental issues. Mr. Martel is the author of two major reports on health and safety in the workplace. He was appointed to the Board in March, 1988.

John McClellan



JOHN MCCLELLAN is a part-time member from Brantford. He is a geographer and has been involved in land use matters for 30 years. From 1974 to 1988 he was Executive Director of the Prince Edward Island Land Use Commission. Since 1989 he has been a Hearing Officer under the Niagara Escarpment Planning and Development Act. He was cross-appointed to the Board on January 1, 1991.

Mary G. Munro



MARY G. MUNRO is full-time Executive Vice-Chair of the Board from Burlington. She is a Registered Nurse by profession and has been active in community and environmental affairs for many years, having served on various boards and commissions. Mrs. Munro has been City Alderman, Regional Councillor and Mayor of the City of Burlington. She was appointed to the Board on September 1, 1981.

Grace Patterson



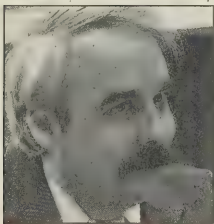
GRACE PATTERSON has been the Board Chair since February, 1990. She practised environmental law with the Canadian Environmental Law Association until her appointment to the Board as a Vice-Chair in 1986. She was a director of several environmental organizations and served on the Science Advisory Board of the International Joint Commission and on the Canadian Environmental Assessment Research Council. Ms. Patterson was also a special lecturer on environmental law at Queen's University Law School.

Jim Robb



JIM ROBB is a full-time Vice-Chair with the Environmental Assessment Board and he is also cross-appointed to the Ontario Environmental Appeal Board. He holds Bachelor of Science and Forestry degrees and a Commercial Pilot Licence. Prior to joining the Board in September 1990, Mr. Robb owned and operated an urban tree care business. As the past Chairman of Save the Rouge Valley System, he worked on watershed conservation issues. Mr. Robb has written for various publications and his photographic credits include the cover of the Crombie Royal Commission Report, *Watershed*.

Alan William Roy



ALAN WILLIAM ROY is a part-time member from Brighton. A science graduate from Sir George Williams University, Montreal and Queen's University, Kingston, Mr. Roy has lengthy scientific experience in the area of fisheries protection. He is currently environmental director for the Union of Ontario Indians and was appointed to the Board in April, 1987.

The Hon. Mr. Justice
Edward Saunders



THE HON. MR. JUSTICE EDWARD SAUNDERS was appointed to the Board in May, 1990 to chair the Hydro Demand/Supply Plan hearing. He is a member of the Ontario Court of Justice (formerly the Supreme Court of Ontario) and has now served on the court for fourteen years. Prior to becoming a judge he practised law in Toronto. He is a graduate of the University of Toronto and Osgoode Hall.

Elaine B. Tracey



ELAINE B. TRACEY is a part-time member from Eganville, appointed to the Board in October, 1987. She was active in community environmental concerns and was the head of a committee to clean up the riverfront. She is a volunteer director of the Valley Savings Credit Union (Renfrew County), past president of the Eganville and District Business Association and recipient of the Business Person of the Year Award. Mrs. Tracey works part-time in the family owned and operated newspaper business.

The Board's Jurisdiction

This table presents the four basic features of each Act under which the Board conducts hearings

JURISDICTION FEATURES				
ACT and its Purpose	Initiative for Hearing	Hearing Subjects	Board Authority	Appeals, and Other
Environmental Assessment <i>"protection, conservation, wise management"</i>	<ul style="list-style-type: none"> Minister of the Environment, responding to proponent, or interested person; or where the Minister considers it advisable (Sections 12 & 13)* 	<ul style="list-style-type: none"> "Undertaking" - proposal, plan or program Public sector, unless exempted by the Minister; Private sector, if designated, by the Minister 	<ul style="list-style-type: none"> Accept or Amend EAs Approve, approve with "terms and conditions", or reject Decisions final, unless altered by Cabinet May award costs Board determines its own practice & procedure (Section 18(13)) 	<ul style="list-style-type: none"> Within 28 days, to the Minister; and decision subject to Cabinet approval (Section 23) Judicial Review
Environmental Protection <i>"the protection and conservation of the natural environment"</i>	<ul style="list-style-type: none"> Director of Approvals - MOE, either mandatory, or discretionary (Sections 30, 32, 36) Individual requests arising from contaminant damage to vegetation or livestock (Section 172) 	<ul style="list-style-type: none"> Mandatory; for waste disposal site capable of serving 1,500+ persons Discretionary, for other sites or waste management systems, & affecting by-laws Contamination (S.172) 	<ul style="list-style-type: none"> Board's decision implemented by the Director unless appealed (Section 33(4), 34) May award costs Assess injury/damage & negotiate claim settlement (Section 172) 	<ul style="list-style-type: none"> Party may appeal - on a question of law, to Divisional Court - on other issues, to Cabinet (within 30 days) (Section 35) Cabinet may confirm, alter or revoke Judicial Review
Ontario Water Resources <i>enabling Minister of Environment to develop and regulate water & sewage services</i>	<ul style="list-style-type: none"> Director of Approvals - MOE, mandatory, or discretionary (Sections 7(1), 54(1), 55(1), 74(4)) 	<ul style="list-style-type: none"> Mandatory; for sewage works in or into a municipality not itself the applicant, & applications re: areas of public water & sewage service Discretionary; for sewage works within applicant's own municipality 	<ul style="list-style-type: none"> Board gives public notice; if no objections, hearing not required (Section 8.2) Decision implemented by Director (Section 7(4)); May award costs 	<ul style="list-style-type: none"> Same appeal rights as the EPA, above
Consolidated Hearings <i>for undertakings requiring hearings before more than one board</i>	<ul style="list-style-type: none"> Proponent through notice to Hearings Registrar on own initiative (Sections 3 & 4) 	<ul style="list-style-type: none"> Undertakings, under 12 Acts in the Schedule of CHA; including Acts above, and <i>Planning Act</i> and <i>Niagara Escarpment Planning & Development Act</i> 	<ul style="list-style-type: none"> Joint Board's decision in effect, unless appealed to Cabinet Board determines its own practice & procedure (S.7.4) May award costs 	<ul style="list-style-type: none"> Within 28 days to Cabinet Otherwise, Cabinet may "confirm, vary or rescind" (Section 13) Judicial Review
Intervenor Funding Project <i>"a pilot project" for intervenor funding for boards' proceedings</i>	<ul style="list-style-type: none"> Parties with intervenor status, for hearings before EAB, Ont. Energy Board, or a Joint Board, by application to board (Section 3) 	<ul style="list-style-type: none"> Submissions for funding on issues affecting (i) a significant segment of public, and (ii) the public interest, not just private interests 	<ul style="list-style-type: none"> Determine the funding proponent Refuse or grant awards Supervise "conditions of an award" 	<ul style="list-style-type: none"> Appeal on "a matter of law", to the Ontario Court (General Division) (Section 13) Judicial Review
Public Inquiries <i>to provide a forum for public issues not covered by other Acts</i>	<ul style="list-style-type: none"> By Order-in-Council 	<ul style="list-style-type: none"> Issues affecting the good government of Ontario, i.e. environmental for EAB 	<ul style="list-style-type: none"> Summon witnesses and documentary evidence, appoint investigators, etc. Board issues report 	<ul style="list-style-type: none"> No appeal for a report

* All section numbers refer to the relevant legislation in the Revised Statutes of Ontario, 1990.

Review of the Intervenor Funding Project Act, 1988

The *Intervenor Funding Project Act*, 1988, (IFPA) proclaimed on April, 1, 1989, established a three-year pilot project to provide funds to public interest intervenors in hearings before the Ontario Energy Board, the Environmental Assessment Board and joint boards, and amended the enabling legislation of these boards in regard to their authority and process to award costs. Subsection 16(1) of the Act provided that Part I, dealing with intervenor funding, would be repealed three years after the day the Act came into force. Thus, the three-year pilot project would end on April 1, 1992.

In the fall of 1991, the Ministries of the Attorney General, Energy and Environment formed a Task Force which retained Professors W.A. Bogart and Marcia Valiante, of the Faculty of Law of the University of Windsor, to evaluate the IFPA. Their evaluation was conducted over a four-month period from October 1991 to January 1992. During this time, they received over ninety submissions from individuals and agencies with an interest and/or experience in the IFPA process.

In its submission to the consultants and the Ministries' Task Force, the EAB indicated that it agrees with the purpose of the IFPA and supports the establishment of intervenor funding as a permanent part of the legislative scheme for assisting public interest intervenors. It also indicated that the provision of funding has generally benefitted Board hearings by enhancing the opportunities for effective public participation and by regularizing the former *ad hoc* system of providing financial assistance by Orders in Council for specific hearings.

Recommendations:

In its brief, the Board reviewed its experience with the Act and presented eight recommendations. These recommendations were that the amended *Intervenor Funding Act*:

1. Provide for the establishment of an independent intervenor funding agency to decide on both initial and supplementary intervenor funding applications and to administer all intervenor funding programs. [This principal recommendation reflects the Board's priority. If it is implemented, some of the other recommendations set out below may be unnecessary or may require appropriate modification.]
2. Include measures to either limit the funds available to public proponents for the preparation of their cases or make it known that there will be some proportionality in funds awarded to intervenors relative to the funds available to public proponents.
- 3(a). Include provisions for intervenor funding at the earliest feasible stage in the approvals process. The purpose of this initial or first stage funding program should be to provide the necessary financial assistance for eligible intervenors to identify the issues of concern, to negotiate with parties of similar interests with a view to forming coalitions and/or co-ordinating their case preparation and presentation, and to prepare a plan for the preparation and presentation of their cases.

- 3(b). Include clear provisions to allow the hearing Board to determine the relevant issues in a proceeding after the initial funding program, described in 3(a) above, has been completed and before the commencement of a second stage funding program related to the costs of case preparation and presentation.
 - 4(a). That the amended *Intervenor Funding Act* provide that the hearing Board may make preliminary determinations of the issues to be addressed at the hearing and the hearing format, and
 - 4(b). Provide that the hearing Board may make rulings on jurisdictional, relevance and procedural issues that arise during the intervenor funding process and are referred to it by the funding decision-maker or by motions from the proponent or the intervenors.
 - 5(a). Clearly indicate that the *Statutory Powers Procedure Act* does not apply and that a hearing is not mandatory for every intervenor funding decision or for decisions regarding applications for supplementary funding.
 - 5(b). Explicitly provide that an appeal of the decision of a funding panel is available to the Ontario High Court on a question of law and not to the Minister or to the Cabinet.
 6. Include provisions to allow the funding decision-maker to award intervenor funding for the disbursements of legal counsel, consultants, expert witnesses, case administrators and the intervenor as necessary for the representation of the interest.
 7. Provide that if the funding decision-maker is to be a panel of the Board, a funding panel may consist of up to three persons named by the Chair of the Board from among its members.
 8. Clearly establish an administrative regime for intervenor funding programs, whether the funding decision-maker is an independent agency, the hearing Board or the combination of funding panel and hearing Board (as the IFPA prescribes at the present time).
- On March 25, 1992, the Attorney General announced that the Government of Ontario had decided to continue the IFPA legislation for four years. The Government's decision was made after receiving the Bogart-Valiante Report which showed broad support for the Act's objectives. The Attorney General indicated that the Government would review and consider the Report's recommendations and, after consultation, would develop proposals for permanent legislation.

Progress Reports

Timber Management Class EA Hearing

During the past year, four parties completed extensive cases at the Board's hearing of the Ministry of Natural Resources Class Environmental Assessment of Timber Management on Crown Lands in Ontario. Grand Council Treaty #3, the Ontario Metis and Aboriginal Association, the Nishnawbe-Aski Nation/Windigo Tribal Council, and the Ontario Federation of Anglers and Hunters/Northern Ontario Tourist Outfitters Association Coalition (the Coalition), all opposed to the application, completed their cases, involving 42 hearing days and 72 witnesses.

The panel also heard, among other submissions, from the Canadian Association of Single Industry Towns, Northwatch, IWA Canada, the Ontario Forestry Association, the Ontario Federation of Labour, the Ontario Public Service Employees Union, the Canadian Paperworkers Union, and the Venture Tourism Association of Ontario, involving 21 hearing days and 56 witnesses.

The panel has followed its original objective of conducting a large part of the hearing in northern Ontario because the people living and working in the north are most directly affected by timber management.

Town hall meetings were held last year in Red Lake, Kenora, Thunder Bay, Sioux Lookout, Toronto, Ottawa, New Liskeard and North Bay. The Environmental Assessment Board arranged French translation under the *French Language Services Act* in the latter four communities. A change to consecutive translation from the simultaneous method previously used, proved to be equally effective and considerably less expensive.

Two issues of importance to the EA process — the length of the hearing and the participation by individuals and parties not represented by lawyers — were dealt with at the Timber Management Hearing. On the issue of timing, the panel agreed to an adjournment of several months to accommodate a late starting date for the case of the OFAH/NOTOA Coalition. The panel decided that the evidence of the Coalition was of importance to its decision and merited extending the time to complete the hearing. With regard to hearing the evidence of unrepresented parties, and those with limited financial resources, the panel provided the services of its Hearing Coordinator and counsel to facilitate written and oral presentations and to make the hearing process more accessible.

The Timber Management Hearing will conclude in November 1992. Since May of 1988, the panel will have held over 400 days of hearings, received submissions from more than 500 witnesses, recorded 70,000 pages of written transcripts and received in the order of 2,500 exhibits.

Ontario Waste Management Corporation Hearing

The Ontario Waste Management Corporation (OWMC) is proposing to build and operate a hazardous waste treatment and disposal facility for wastes from across Ontario. The facility, if approved, would be built near Smithville, in the Niagara peninsula.

The panel heard evidence on four phases of the hearing. Phase 2 was concerned with the OWMC's selection of a preferred waste management system while Phase 3 dealt with the selection of a preferred site. The fourth phase provided evidence with regard to the selection of appropriate technology and the design of the facility. With this information in evidence, the panel then heard about site assessment and anticipated impacts in Phase 5.

In the past year, three funded intervenors asked for an additional \$1.4 million in an application for supplementary funding under the *Intervenor Funding Project Act*. The panel was prepared to award only \$416,889 on the basis of the information provided. However, when information requested by the panel was provided, the panel was able to properly evaluate the requests and an additional \$383,431 was awarded.

The evidentiary stage of the hearing is almost at an end and final argument is expected to be heard early this fall.

Ontario Hydro Demand/Supply Plan Hearing

In April of 1991 the environmental assessment hearing based on Ontario Hydro's 25-year demand and supply plan *Providing the Balance of Power* began. Since then, 125 days of direct evidence and cross-examination by 219 participants and intervenors have been heard by the panel.

Eight of the proponent's subject panels were completed by the end of March, 1992, covering Ontario Hydro's load forecasting, existing system, costs and cost concepts, demand management, non-utility generation, hydraulic system, transmission system, fossil generation and alternative energy sources. Two more witness panels, nuclear generation and overview of the Demand/Supply Plan, will be heard before intervenors present their own cases and are cross-examined by Hydro and other parties.

Since March of 1991, numerous motions have been brought before the hearing panel concerning, among other things, the granting of status to new parties and participants, the suitability of the staged hearing approach to the assessment of hydraulic projects and the need for cumulative impact assessment, the relevance of arguments concerning the decentralization of electrical supply, the adequacy of interrogatory responses by Ontario Hydro, and the effect of certain terms in the contract between Ontario Hydro and Manitoba Hydro on the exercise of the panel's jurisdiction under the *Environmental Assessment Act*. The hearing panel has also rendered decisions on requests for supplementary funding.

In September of 1991 the panel made a trip by helicopter to the Northern Ontario communities of Moosonee, Moose Factory and Kapuskasing. In addition to visiting proposed and existing hydraulic sites, meetings were held in each community to allow local citizens to express opinions and concerns about Hydro's Demand/Supply Plan.

Other site visits included visits to the Nanticoke (coal-fossil), Niagara (hydraulic), and Darlington (nuclear) generating stations. The panel also made a trip to Clarkson, Ontario Hydro's "nerve centre", which controls the dispatch of facilities, and to the Kortright Centre for Conservation which demonstrates small-scale solar and wind energy generation.

In January of 1992 Ontario Hydro released an Update to the Demand/Supply Plan, the product of on-going planning and forecasting. The Update forecasts a reduced need for new electricity generation compared to the original Plan as a result of lower demand and increased demand management, energy efficiency and non-utility generation, all of which will reduce the need for new major supply. The publication of the Update necessitated a hearing panel decision regarding its effect on the scope of the hearing.

Ontario Hydro's 25-year plan is far reaching in scope, and many complicated issues have been raised by the large public affected. Addressing these issues is a formidable task, a process the panel expects to continue well into 1993.

The Niagara Escarpment and the Board

In June 1990, the Ministry of the Environment assumed responsibility for the *Niagara Escarpment Planning and Development Act* (NEPDA). In the Ministry's ensuing assessment of roles and responsibilities, Niagara Escarpment Hearing Officers John Duncanson and John McClellan were cross-appointed as members of the Environmental Assessment Board. Their new roles involve conducting hearings as part of Joint Boards on appeals related to development permits for undertakings in the Niagara Escarpment Plan area, or to amendments to the Plan. Three other members of the EAB have been named by the Minister as hearing officers who have authority to conduct development permit appeal hearings when the need arises.

Late in 1990, the first five-year review of the NEP was completed, as required by the NEPDA (Section 17), marking a new phase in planning for the Niagara Escarpment. The hearing on the Review began in August 1991.

Short reports on the Plan Review hearing, a Plan Amendment hearing dealing with landfills on the escarpment, and the activities of the Niagara Escarpment Hearing Office follow.

Niagara Escarpment Plan Review Hearings

The provisions of section 17 of the NEPDA require that a review of the Niagara Escarpment Plan (NEP) be undertaken not later than five years from the day on which the Plan came into effect on June 10, 1985, and subsequently at five year intervals. The Minister is to "cause" the review to be conducted and, accordingly, on June 10, 1990 the Minister of the Environment requested the Niagara Escarpment Commission (NEC) to undertake the first review.

The NEPDA sets out the regime to be followed for giving notice of the Review and for consultation with the public, the affected municipalities and provincial Ministries. The Act also provides that after the consultation period has expired, the NEC must appoint one or more hearing officers to conduct hearings related to any proposals for revisions to the Plan. In this case, the NEC appointed two members of the EAB (one of whom also acts as a Hearing Officer on development control appeals) as hearing officers.

The hearing officers are required to conduct the hearing and to submit a report to the NEC and the Minister. The report is to include a summary of the evidence and the hearing officers' recommendations.

After giving consideration to the comments received and the hearing officers' report, the NEC must submit its recommendations to the Minister. The Minister in turn must consider the reports from the NEC and the hearing officers and submit her recommendations to the Lieutenant Governor in Council. If the Minister's recommendations differ from the report and recommendations of the hearing officers, the Minister must give public notice describing her intentions. If this occurs, a period of 21 days is allowed for written submissions to Cabinet. The Cabinet may approve the proposed Plan revisions or may approve them with such modifications as it deems desirable.

The hearing commenced in Burlington on August 12, 1991, moved to Owen Sound in September for 10 weeks and returned to Lowville, in rural Burlington, on December 5th. After 86 hearing days and 7 evening sessions, the hearing of evidence was completed early in March, 1992. The hearing officers requested that final submissions be in writing and filed by specific dates to the end of April.

Of the 183 witnesses appearing at the hearing, 44 were persons appearing on their own behalf and the remainder represented other interests. In a few cases, experts or agents appeared several times, representing a different client on each occasion.

In the first few weeks of the hearing, there were a number of procedural motions related primarily to the applicability of certain legislation. Of particular interest were motions related to:

- whether the *Environmental Assessment Act* should apply to the NEP Review;
- whether the *Intervenor Funding Project Act* should apply to the NEP Review hearing;
- whether the hearing should be conducted in stages;
- whether the hearing officers should make recommendations regarding site-specific amendments to the Plan; and
- the legislative requirements to be met when transferring responsibility for the implementation of certain legislation from one Ministry to another.

Of the many contentious issues related to the Commission's proposals, which affect different regional and local interests along the 725 km length of the NEP Area, some of the most controversial issues proved to be those arising from NEC proposals to:

- delete new or expanded aggregate extraction facilities as a permitted use in the Escarpment Rural designation;
- delete low density plans of subdivision from the Escarpment Rural designation;
- increase restrictions on the creation of new lots in the Plan area;
- delete all provisions for farm retirement lots;
- delete golf courses as a permitted use in the Escarpment Protection designation;

- require proof of "public need" for certain Plan amendments;
- impose a moratorium on all pond construction in the Escarpment Natural designation and on all non-farm ponds in the other designations; and
- increase the limits to the uses allowed on escarpment slopes.

It is anticipated that the hearing officers' report will be released in the next few months.

Amendment 52 of the Niagara Escarpment Plan

On May 27, 1992 the Provincial Cabinet amended the Niagara Escarpment Plan to require landfill proposals to undergo a rigorous plan amendment process for new or expanded waste disposal operations, or if there is a change in the type of material proposed for disposal. This Amendment 52 was initiated in March, 1989 in response to presentations by citizens' groups and advice from several Escarpment municipalities.

Following initial objections to proceeding with this matter, six weeks of hearings began in February, 1991.

The evidence heard by the panel seriously questioned the suitability of Escarpment lands for the siting of landfills and the weight of this evidence was that despite careful engineering in the preparation and management of sites, these Escarpment lands are generally unsuitable due to the uncertainties related to satisfactory containment of contaminants. The seven findings of the Joint Board for the Halton Landfill hearing in February, 1989, were helpful in assessing the hydrogeological suitability potential for landfill sites. Responses given by two of the witnesses to the seven questions posed by these findings are set out in full in the report of Amendment 52.

Concerns were raised for the duplication of process between the Niagara Escarpment Planning and Development Act, the Environmental Assessment Act and the Environmental Protection Act. These were dismissed by the panel on evidence that there is nothing to prevent parallel processing under the necessary legislation and that there is sufficient difference in the purposes and means of applying the provisions of these three Acts to justify the need for separate consideration under the Niagara Escarpment Planning and Development Act.

The outcome of the hearing was a recommendation that Amendment 52 be approved, with amended wording. That amended wording is now set out in the Niagara Escarpment Plan.

Niagara Escarpment Hearing Office

Of the 843 applications considered by the Niagara Escarpment Commission during the 1991-1992 fiscal year, 115 were appealed. Of these, 11 went to a Consolidated Hearing, 21 appeals/applications were withdrawn, one file was closed and four were adjourned *sine die*. Hearings were held on the remaining 78 appeals. Decisions by the Minister have been made on 74 applications, with four decisions still outstanding. Of the decisions made, the Minister has concurred with the recommendation of the hearing officer on all but two applications. In addition, two Plan amendment hearings were held.

Index of Decisions

Environmental Protection Act

EP-90-02

APPLICANT:

Tri-Municipal Landfill
Kenora

Concerning an application by the Corporation of the Town of Kenora for a five year extension of the existing Tri-Municipal Landfill site and an expansion of the site in the Township of Haycock in the District of Kenora which serves three municipalities: Kenora, Keewatin and Jaffray-Melick.

ISSUE:

At issue was not the expansion itself, but the conditions of approval.

DECISION:

Subject to conditions set out by the Board, approval was given to the extension and expansion permitting continued use of the Tri-Municipal Landfill Site by the municipalities of Kenora, Keewatin and Jaffray-Melick and surrounding territories.

Conditions of approval covered the monitoring and mitigation of leachate from the site, the collection of hazardous household waste, and Kenora's efforts to reduce and divert waste.

RELEASE DATE:

8 November 1991

EP-90-03

APPLICANT:

City of Orillia

Concerning an application by the City of Orillia to expand the service area of its Kitchener Street Landfill Site to accept waste from the Township of Rama and the Township of Orillia, in addition to the already serviced City of Orillia.

ISSUE:

None of the parties opposed the expansion of the service area, but there was disagreement over the conditions of approval. Community-based parties were particularly concerned that the principles of Reduction, Reuse and Recycling be observed.

DECISION:

Approval for expansion of the area of service of the Kitchener Street Landfill Site was granted subject to conditions.

Conditions of approval covered plans for waste minimization and operations, including implementation of reduction, reuse and recycling; the monitoring and control of ground and surface water quality; the improvement of water quality affected by the landfill; and establishment of a waste advisory committee to advise and assist the three municipalities with respect to all aspects of waste management.

Consolidated Hearings Act

CH-85-03 (1991)

APPLICANT: Ontario Hydro (Southwestern)

Concerning an application by Ontario Hydro to amend part of the decision of the Joint Board dated February 20, 1987 for the purpose of clarification. Ontario Hydro had applied for the acquisition of property rights for transmission use in the Kincardine, Barrie, and London areas.

ISSUE: At issue was whether Ontario Hydro was responsible for the relocation of residences and outbuildings that fell within 75 m of the edge of a Hydro right-of-way.

DECISION: Several sentences were added to Condition 22 of Schedule "A" of the decision of the Joint Board dated February 20, 1987 to clarify that the proponent shall not be responsible for the relocation of a residence if such relocation is unreasonable.

RELEASE DATE: 7 May 1991

CH-89-09

APPLICANT: Leonard and Ruth Legros

Concerning two appeals: from a decision of the Niagara Land Division Committee, which refused the parties' application for consent to sever land; and from a decision of the Niagara Escarpment Commission (NEC) which refused a development permit application for their lot in the village of St. David's in the Town of Niagara-on-the-Lake.

ISSUE: At issue was whether the Legros' lot fell within the boundaries of the village of St. David's, which is within the Minor Urban Centre designation. Development within a minor urban centre is subject to a wider range of permitted uses than development outside such a designation. The boundary of St. David's is under negotiation between the Town of Niagara-on-the-Lake and the NEC.

DECISION: The Board granted the requested severance and development permits provided that the applicant fulfilled specified conditions.

RELEASE DATE: 20 December 1991

CH-90-08

APPLICANT:

Mountainview Industrial Parks

Concerning two matters: an appeal by the applicant from a decision of the Niagara Escarpment Commission (NEC) refusing an application to increase the permitted uses within a commercial plaza in the Town of Flamborough in the Regional Municipality of Hamilton-Wentworth and a request by the applicant to amend the Official Plan of Flamborough to Urban Commercial from Highway Urban-Commercial.

ISSUE:

Mountainview was seeking a designation that would allow it the following uses: convenience retail, restaurants, personal service and office.

DECISION:

The Board redesignated the lands Highway Commercial-Urban-Site Specific Area #1. The appeal was allowed provided the uses were limited to the four proposed, and pending fulfilment of specified conditions which included adherence to the Site Plan Agreement with the Town of Flamborough (specifically with respect to landscaping, lighting and garbage), negotiation with Ontario Hydro to plant trees on an adjacent Hydro right-of-way, and construction of a pedestrian walkway.

RELEASE DATE:

21 May 1991

CH-90-09

APPLICANT:

Regional Municipality of Durham

Concerning an application under the *Environmental Protection Act* by the Regional Municipality of Durham to establish a landfill site in the village of Whitevale in the Town of Pickering, Regional Municipality of Durham.

Initially intended to be exempted from the *Environmental Assessment Act*, the application was later withdrawn after the Minister of the Environment suspended the exemptions under the *Environmental Assessment Act* for this and another site.

ISSUE:

The Town of Pickering, Pickering Ajax Citizens Together and the Whitevale and District Residents Group brought motions for costs resulting from the withdrawal of the application, against Durham and/or the Ministry of the Environment (MOE).

DECISION:

The Regional Municipality of Durham was ordered to pay a total of \$136,905.60 in costs to the Town of Pickering, the group Pickering Ajax Citizens Together, and the Whitevale and District Residents Group. Claims for costs against the MOE were dismissed.

RELEASE DATE:

26 April 1991

CH-90-11

APPLICANT:

Rocksprings Enterprises Limited

Rocksprings Enterprises Ltd. applied and received approval from the Grey County Planning Approval Committee to sever a lot in the Township of Sydenham. Niagara Escarpment Commission (NEC) denied approval to develop the proposed severed lot.

This matter involved two appeals: the NEC appealed the Grey County decision granting severance approval to Rocksprings; and Rocksprings appealed the NEC's decision denying the development permit.

ISSUE:

At issue was whether the severance should be granted; whether the development permit should be granted, and whether any terms or conditions should apply to these applications.

DECISION:

The Joint Board allowed the appeal by the NEC, and dismissed the appeal by Rocksprings Ltd. The request for consent to sever and develop the property was denied.

The Board found that the Rocksprings' proposal did not comply with: the *Niagara Escarpment Planning and Development Act*; the Niagara Escarpment Plan's new lot policies; the *Planning Act*, Section 50(4); and the Niagara Escarpment Plan's objective of avoiding adverse cumulative impact on the Escarpment's scenic and open landscape.

RELEASE DATE:

13 September 1991

CH-91-02

APPLICANT:

Mr. and Mrs. Sebastian Cappellano

Concerning two appeals, by the Niagara Escarpment Commission (NEC) from a decision of the Committee of Adjustment of the Town of Mono granting an application by Mr. Cappellano to sever land; by Mr. Cappellano from a decision by the NEC refusing an application for a development permit to construct a single family dwelling on the severed land.

The Cappellanos intended to sell the severed land to generate income to finance full-time farming.

ISSUE:

At issue was conformance with the new lot creation section of the Niagara Escarpment Plan on strip development and fragmentation of farms, and whether severance for the purpose of income generation was appropriate.

DECISION: The Board allowed the appeal of the NEC and dismissed the appeal of the Cappellanos. The application for a development permit was denied, because creation of the proposed lot would cause farm fragmentation of the land around it. The Board cited decisions of the Ontario Municipal Board where the generation of income was not found to be a proper planning principle justifying the granting of consent.

RELEASE DATE: 21 October 1991

CH-91-04

APPLICANT: Percival and Imrie

Concerning the two related appeals on severance and development: by the Niagara Escarpment Commission (NEC) from a decision of the Regional Municipality of Peel granting an application by Marion Percival for severance of land; by John David Imrie from a decision of the NEC refusing a development permit application for the proposed severed lot.

ISSUE: At issue was whether the consent to sever was in the public interest as represented by the Niagara Escarpment Plan, if the proposals conformed to the Town of Caledon Official Plan and if the frontage to depth ratio of the proposed lot would be appropriate.

DECISION: The appeal of the NEC was allowed and consent to sever was denied. The appeal concerning the development permit was dismissed.

The Board found that the proposal would have a negative effect on the public interest as it failed to meet the lot policy requirements and strip development conditions set out in the *Niagara Escarpment Planning and Development Act*. The proposal did not conform to the Caledon Official Plan because it would create a lot with an inappropriate frontage to depth ratio.

RELEASE DATE: 14 February 1992

Intervenor Funding Project Act

EA-90-01 (F)

FUNDING PROPONENT: Ontario Hydro

Supplementary funding was requested by Pollution Probe under the *Intervenor Funding Project Act* to permit continued participation in an Environmental Assessment Board hearing on Ontario Hydro's application requesting requirement and rationale approvals for electricity generation based on 25 year plan.

ISSUE: At issue was Pollution Probe's eligibility for funding and funding allocation as a result of changed circumstances in staffing that rendered their original award inadequate.

DECISION: The panel awarded \$49,115.95 in supplementary funding to Pollution Probe, correcting for an error in the original award and compensating the intervenor for additional consultant costs.

RELEASE DATE: 25 March 1992

EA-91-01 (F)

FUNDING PROPONENT: Laidlaw Waste System Limited

Funding was requested under the *Intervenor Funding Project Act* to support the participation of intervenors in a hearing examining the application by Laidlaw Waste Systems Ltd. for approval to expand a landfill site in the Township of Storrington.

ISSUE: Whether an intervenor having a particular interest should receive funding only for issues that relate directly to that interest; the reasonableness of the legal time requested; the reasonableness of the amounts requested for expert witnesses; efforts to raise funds; whether an individual whose interest in the matter is not demonstrably different from that of the members of a funded intervenor group should receive funding for full-time legal representation; and whether a private proponent should be treated differently under the IFPA than a public proponent.

DECISION: After determining the reasonableness of the legal time requested, the two intervenors were awarded 800 and 915 hours respectively for a 40 day hearing. In assessing the amounts requested for expert witnesses, the panel found that the intervenors' proposed hydrogeological reviews were duplicative, and that a project coordinator was not necessary. With respect to fund raising efforts, the panel required a citizens group to contribute 2% and a municipality 50% of the approved budget. The panel also decided that a private proponent should not be treated differently under the IFPA than a public proponent.

RELEASE DATE: 14 February 1992

EA-91-01 (F)

FUNDING PROPONENT: Laidlaw Waste System Limited

Funding was requested under the *Intervenor Funding Project Act* to finance property appraisals near the Storrington Township Landfill Site in the County of Frontenac.

ISSUE: One of the proponent's witnesses had already submitted a report examining the impact of a landfill site on property values. At issue was whether another consultant's property value analysis was warranted.

DECISION: The nature of the proposed study was different from the study relied upon by the proponent. The panel awarded \$7,500 for the assessment of property value impacts.

RELEASE DATE: 31 March 1992

CH-87-02 (FAS I)

FUNDING PROPONENT: Ontario Waste Management Corporation (OWMC)

Three intervenors made an application for supplementary funding under the *Intervenor Funding Project Act*. The hearing concerned an undertaking by OWMC to establish a hazardous waste management system in the Township of West Lincoln, in the Regional Municipality of Niagara. The three applicants made a collective "fourth intervenor" application for further expert witness funding.

ISSUE: The issues that arose in assessing the adequacy of the original award included the level of detail necessary to support a request for supplementary funding, the panel's role in examining the reasonableness of the use of funds spent to date, and the extent to which criteria were met.

DECISION: The intervenors were awarded \$416,889 (29% of the request) for legal expenses, technical consultant/coordinator fees, general disbursements, and costs for expert witnesses. Applications that were dismissed due to lack of information would be considered when sufficient information was provided.

RELEASE DATE: 19 April 1991

CH-87-02 (FAS II)

FUNDING PROPONENT: Ontario Waste Management Corporation (OWMC)

Three intervenors requested further supplementary funding under the *Intervenor Funding Project Act* to participate in the OWMC hearing.

ISSUE: At issue was the eligibility for supplementary funding of intervenors whose applications had been denied in the decision of CH-87-02 (FAS I) due to inadequate information, and who had now furnished adequate information for evaluation.

DECISION: The three intervenors were awarded \$383,431.90 in supplementary funding.

RELEASE DATE: 17 June 1991

CH-87-02 (FAS III)

FUNDING PROPONENT: Ontario Waste Management Corporation (OWMC)

Three intervenors requested further supplementary funding under the *Intervenor Funding Project Act* to participate in the OWMC hearing.

ISSUE: Funds were requested for an unanticipated expert witness review of new OWMC documents, but the intervenors were unwilling to contribute anything towards the cost.

DECISION: The three intervenors were awarded \$13,784.94 (90% of the amount requested) towards expert witness review costs, and were required to contribute the first 10%.

RELEASE DATE: 11 September 1991

CH-90-03 (F)

FUNDING PROPONENT: City of Orillia

Funding was requested under the *Intervenor Funding Project Act* to enable the intervenors to participate in a hearing under the *Environmental Protection Act* examining the proposal of the City of Orillia to expand the service area of its Kitchener Street landfill site.

ISSUE: At issue was the eligibility for funding and the funding award to intervenors.

DECISION: The two intervenor groups were awarded \$34,883.60 for legal costs, expert witnesses and disbursements.

RELEASE DATE: 25 July 1991

CH-91-01 (F)

FUNDING PROPONENT: Innisfil Landfill Corporation (Interim Decision)

Parties requested funding under the *Intervenor Funding Project Act* to participate in the *Environmental Protection Act* hearing examining the proposal of the Innisfil Landfill Corporation to continue operating and to expand a waste disposal site in the Town of Innisfil.

ISSUE: At issue was the eligibility for funding of intervenors opposing the proponent's application for a Certificate of Approval.

DECISION: In this interim decision, four intervenors were found to be eligible for intervenor funding.

RELEASE DATE: 7 October 1991

CH-91-01 (F)

FUNDING PROPONENT: Innisfil Landfill Corporation

Parties requested funding under the *Intervenor Funding Project Act* to participate in the *Environmental Protection Act* hearing examining the proposal of the Innisfil Landfill Corporation to continue operating and to expand a waste disposal site in the Town of Innisfil.

ISSUE: At issue was whether the intervenors were entitled to separate funding for legal representation at the hearing.

DECISION: To avoid duplication in areas of expert study, it was assumed for funding purposes that the Town of Innisfil, the Conservation Authority and the Ratepayers' Association would be represented by the Town's counsel. These intervenors were to resolve the duplication problem by identifying their own issues of concern and applying for separate supplementary funding if necessary.

The intervenors were awarded \$316,376.

RELEASE DATE: 29 November 1991

Intervenor Funding Programs Pursuant to Orders in Council

EA-87-02 (F) 91/92 (O.C. 672/91)

FUNDING PROPONENT: Ministry of Natural Resources; Ministry of Environment

Nine existing participants applied for funding to support their further participation in a class environmental assessment hearing examining the environmental effects and public input in the planning of timber management on Crown lands in Ontario.

Before the hearing, a mediation process was unsuccessful in helping the parties find common ground and thereby reduce their costs.

ISSUE: At issue were eligibility and allocation of additional Order in Council intervenor funding of \$450,000 for the nine parties who submitted applications.

DECISION: The \$450,000 was allocated among six of the nine applicants for legal and expert fees and disbursements, and one intervenor was required to remit payment for the balance of unspent and unallocated funds.

RELEASE DATE: 23 July 1991

OC-91-01 (F)

FUNDING PROPONENT: The Essex-Windsor Waste Management Committee

This was a program to distribute funds provided voluntarily by the proponent, pursuant to an Order in Council, to finance public involvement in a pre-hearing process. The funding program was restricted to the landfill component of the Essex-Windsor Waste Management Master Plan Process.

The intervenors were concerned with the application for approval by the Essex-Windsor Waste Management Committee for the expansion and long term use of a landfill site in the Township of Colchester North and a second landfill site in the Township of Maidstone.

ISSUE: At issue were eligibility and allocation of funds among eleven applicants for \$500,000 under the terms and conditions of the Order in Council.

DECISION: The Board distributed \$165,425 in funding for legal and expert fees and disbursements. Three applications were dismissed.

RELEASE DATE: 23 March 1992

Programmes d'aide financière aux intervenants établis par décret

EA-87-02 (F) 91/92 (décret 672/91)

PROMOTEUR : Ministères des Richesses naturelles et de l'Environnement

Neuf des intervenants qui participent actuellement à l'audience ont demandé de l'aide financière pour pouvoir participer à une autre audience (évaluation environnementale de portée générale) chargée d'examiner les effets environnementaux d'un projet de gestion du bois d'œuvre sur les terres de la Couronne et d'entendre les points de vue du public à cet égard.

Avant l'audience, les parties intervenantes se sont rencontrées en la compagnie d'un médiateur pour tenter de parvenir à un accord et réduire ainsi leurs dépenses. La médiation s'est toutefois soldée par un échec.

CONTENUEUX :

Le jury devait décider, d'une part, lesquelles des neuf parties qui ont fait une demande d'aide financière seraient admissibles à la subvention de 450 000 \$ accordée par décret et, d'autre part, le montant qui serait versé à chacune des parties admissibles.

DÉCISION :

La subvention de 450 000 \$ a été répartie parmi six des neuf demandeurs et devait servir à couvrir les frais juridiques et les honoraires des experts cités comme témoins. Un des six intervenants admissibles devait rendre le solde non dépensé et les fonds non attribués.

DATE :

Décision rendue le 23 juillet 1991.

OC-91-01 (F)

PROMOTEUR :

Comité de gestion des déchets d'Essex-Windsor

L'audience a porté sur l'attribution des fonds versés volontairement par le promoteur, à la suite d'un décret, pour donner l'occasion au public de participer aux préparatifs de l'audience. Le programme d'aide financière était restreint à la composante du plan directeur de gestion des déchets d'Essex-Windsor se rapportant au lieu d'enfouissement.

Les intervenants voulaient présenter leurs considérations quant à l'autorisation par le comité de gestion des déchets d'Essex-Windsor du projet d'agrandissement et d'exploitation à long terme de deux lieux d'enfouissement, situés dans les cantons de Colchester-Nord et de Maidstone.

CONTENUEUX :

Le jury devait décider comment répartir la subvention de 500 000 \$ parmi les onze demandeurs, conformément aux conditions du décret.

DÉCISION :

La Commission a distribué la somme de 165 425 \$ pour des frais juridiques, les honoraires d'experts et autres dépenses accessoires. Trois demandes ont été rejetées.

DATE :

Décision rendue le 23 mars 1992.

CH-91-01 (F)

PROMOTEUR : Innisfil Landfill Corporation (décision provisoire)

Les parties ont sollicité de l'aide financière en vertu de la *Loi sur le projet d'aide financière aux intervenants* pour pouvoir participer à une audience tenue en vertu de la *Loi sur la protection de l'environnement*. L'audience devait examiner la demande faite par la Innisfil Landfill Corporation pour continuer d'exploiter et agrandir un lieu d'enfouissement situé dans la ville d'Innisfil.

CONTENTUEUX :

Le jury devait décider si les intervenants qui s'opposent à la demande faite par le promoteur étaient admissibles à une aide financière.

DÉCISION :

Dans cette décision provisoire, quatre intervenants ont été jugés admissibles à une aide financière.

DATE :

Décision rendue le 7 octobre 1991.

CH-91-01 (F)

PROMOTEUR : Innisfil Landfill Corporation

Les parties ont sollicité de l'aide financière en vertu de la *Loi sur le projet d'aide financière aux intervenants* pour pouvoir participer à une audience tenue en vertu de la *Loi sur la protection de l'environnement*. L'audience devait examiner la demande faite par la Innisfil Landfill Corporation pour continuer d'exploiter et agrandir un lieu d'enfouissement situé dans la ville d'Innisfil.

CONTENTUEUX :

Le jury devait décider si les intervenants pouvaient recevoir chacun une aide financière pour couvrir leurs frais juridiques respectifs lors de l'audience.

DÉCISION :

Afin d'éviter qu'il y ait doublement dans les rapports d'experts, il a été entendu que la ville d'Innisfil, l'office de protection de la nature et l'Association des contribuables seraient représentées par l'avocat de la ville d'Innisfil. Ces intervenants devaient résoudre le problème du doublement en identifiant leurs propres points litigieux et, au besoin, en faisant séparément des demandes d'aide financière supplémentaires.

Les intervenants ont reçu une aide financière de 316 376 \$.

DATE :

Décision rendue le 29 novembre 1991.

CH-87-02 (FAS II)

PROMOTEUR : Société ontarienne de gestion des déchets

Trois intervenants ont demandé une aide financière supplémentaire en vertu de la *Loi sur le projet d'aide financière aux intervenants* pour pouvoir participer à l'audience.

Le jury devait décider si les intervenants étaient admissibles à une aide financière supplémentaire, après qu'une première demande leur eut été refusée (décision CH-87-02 [FAS II] en raison d'un manque d'information. Les intervenants avaient cette fois-ci rassemblé toute l'information requise.

DÉCISION : Les trois intervenants ont reçu une aide financière supplémentaire de 383 431,90 \$.

DATE : Décision rendue le 17 juin 1991.

CH-87-02 (FAS III)

PROMOTEUR : Société ontarienne de gestion des déchets

Trois intervenants ont demandé une aide financière supplémentaire en vertu de la *Loi sur le projet d'aide financière aux intervenants* pour pouvoir participer à l'audience.

Les intervenants ont sollicité des fonds supplémentaires pour faire examiner, par un témoin expert, de nouveaux documents présentés par le promoteur. Les intervenants ne désiraient assumer aucun des coûts associés à l'examen.

DÉCISION : Les trois intervenants ont reçu une aide financière de 13 784,94 \$ (90 % des fonds sollicités) pour couvrir les frais de l'examen par un témoin expert, étant entendu qu'ils couvriraient la première tranche de 10 % des frais.

DATE : Décision rendue le 11 septembre 1991.

CH-90-03 (F)

PROMOTEUR : Ville d'Orillia

Les intervenants ont demandé de l'aide financière en vertu de la *Loi sur le projet d'aide financière aux intervenants* pour pouvoir participer à une audience tenue en vertu de la *Loi sur la protection de l'environnement*. L'audience devait examiner la demande faite par la ville d'Orillia pour élargir la zone desservie par le lieu d'enfouissement de la rue Kitchener.

CONTENTIEUX : Le jury devait décider si les intervenants étaient admissibles à une subvention.

DÉCISION : Les deux groupes d'intervenants ont reçu une aide financière de 34 883,60 \$ pour couvrir leurs frais juridiques, les frais des experts cités comme témoins et autres dépenses accessoires.

DATE : Décision rendue le 25 juillet 1991.

DATE : Décisions rendues le 14 février 1992.

demande au groupe de citoyens et la municipalité de contribuer 2 % et 50 % respectivement du budget approuvé. Enfin, le jury a décidé qu'un promoteur privé ne devrait pas être traité autrement qu'un promoteur public en vertu de la *Loi sur le projet d'aide financière aux intervenants*.

EA-91-01 (F)

PROMOTEUR : Laidlaw Waste System Limited

La demande de subvention a été faite en vertu de la *Loi sur le projet d'aide financière aux intervenants* pour financer des évaluations foncières près du lieu d'enfouissement du canton de Stormington, comté de Frontenac.

CONTENTUEUX : L'un des témoins cité par le promoteur avait déjà présenté un rapport examinant les conséquences du lieu d'enfouissement sur la valeur des propriétés environnantes. Le jury devait décider si une seconde évaluation foncière était justifiée.

DECISION : L'évaluation proposée étant différente de celle sur laquelle s'était appuyé le promoteur, le jury a accordé un subside de 7 500 \$ pour la réalisation d'une étude d'impact sur les valeurs foncières.

DATE : Decision rendue le 31 mars 1992.

CH-87-02- (FAS I)

PROMOTEUR : Société ontarienne de gestion des déchets

Trois intervenants ont demandé une aide financière supplémentaire en vertu de la *Loi sur le projet d'aide financière aux intervenants*. L'audience a porté sur l'aménagement d'un système de gestion des déchets dangereux dans le canton de Lincoln-Ouest, municipalité régionale de Niagara. L'aide financière demandée par « voie collective » par les trois intervenants était destinée à payer les services de témoins experts additionnels.

CONTENTUEUX : Le jury devait décider s'il y avait suffisamment de renseignements pour accorder une aide financière supplémentaire, s'il était de son ressort d'établir si les intervenants avaient fait bon emploi des fonds qui leur avaient été initialement accordés et d'évaluer la mesure dans laquelle les conditions qui étaient assorties à cette subvention avaient été remplies.

DECISION : Les intervenants ont reçu une subvention de 416 889 \$ (29 % des fonds sollicités) destinée à couvrir les frais juridiques, les honoraires d'un conseiller technique ou d'un coordonnateur, les débours généraux et les frais des experts cités comme témoins. Les demandes rejetées pour cause d'information insuffisante seraient examinées une fois l'information complète.

DATE : Decision rendue le 19 avril 1991.

Loi sur le projet d'aide financière aux intervenants

EA-90-01 (F)

PROMOTEUR :

Ontario Hydro

Le groupe Pollution Probe a sollicité de l'aide financière supplémentaire, en vertu de la *Loi sur le projet d'aide financière aux intervenants*, pour pouvoir continuer à participer à l'audience de la Commission des évaluations environnementales, audience ayant pour but d'évaluer le plan de production électrique de la société Ontario Hydro pour les 25 prochaines années.

CONTENUX :

Le comité d'aide financière devait décider si Pollution Probe était admissible à une aide financière supplémentaire en raison de nouvelles circonstances, qui ont exigé une hausse des effectifs.

DÉCISION :

Le comité d'aide financière a accordé une subvention additionnelle de 49 115,95 \$ à Pollution Probe, corrigeant ainsi une erreur dans la subvention initiale et dédommageant l'intervenant pour des frais de consultation accrus.

DATE :

Décision rendue le 25 mars 1992.

EA-91-01 (F)

PROMOTEUR :

Laidlaw Waste System Limited

La demande de subvention a été faite en vertu de la *Loi sur le projet d'aide financière aux intervenants* pour permettre aux intervenants de participer à une audience où serait examinée la demande d'autorisation présentée par la société Laidlaw Waste Systems Ltd. pour l'agrandissement d'un lieu d'enfouissement dans le canton de Stormington.

CONTENUX :

Le jury devait trancher plusieurs questions en litige, à savoir : si un intervenant ayant un intérêt particulier dans une affaire est admissible à une aide financière pour défendre cet intérêt particulier; si le temps légal sollicité est raisonnable; si les fonds demandés pour retenir les services de témoins experts étaient justifiés; quel serait le pourcentage du budget contribué par les intervenants; si une personne dont l'intérêt dans une affaire n'est pas manifestement différent de celui qu'ont les membres d'un groupe d'intervenants qui reçoit des subsides devrait être traité autrement engager un avocat à temps plein; et si un promoteur privé devrait être traité autrement qu'un promoteur public aux termes de la *Loi sur le projet d'aide financière aux intervenants*.

DÉCISIONS :

Le temps légal sollicité ayant été jugé raisonnable, le jury a accordé aux deux intervenants 800 et 915 heures d'audience respectivement, échelonnées sur 40 jours. Pour évaluer le temps d'audience demandé pour les témoignages des experts, le jury était d'avis que les études hydrogéologiques proposées par les intervenants auraient été redondantes et que l'apport d'un coordonnateur de projet n'était par conséquent pas requis. En ce qui concerne les fonds engagés par les intervenants, le jury a

M. et Mme Cappellano avaient l'intention de vendre la parcelle du lot et d'utiliser le gain financier pour se consacrer à temps plein à l'agriculture.

CONTENTUEUX : La Commission devait se prononcer sur l'application de la nouvelle disposition du Plan d'aménagement de l'escarpement du Niagara (lotissement en rubans et fragmentation des exploitations agricoles) et décider s'il était légitime de morceler un lot pour obtenir un revenu.

DÉCISIONS : La Commission d'audience a donné gain de cause à la Commission de l'escarpement du Niagara et rejeté l'appel interjeté par M. et Mme Cappellano. La demande d'un permis d'aménagement a été refusée, parce que le morcellement du lot en question aurait entraîné la fragmentation des terres agricoles avoisinantes. La Commission a cité les décisions rendues par la Commission des affaires municipales de l'Ontario selon lesquelles la production d'un revenu n'était pas un principe de planification valable et ne justifiait donc pas l'autorisation de morceler un lot.

DATE : Décisions rendues le 21 octobre 1991.

Marion Percival et John David Imrie

L'audience a porté sur deux appels relatifs au morcellement et à l'aménagement d'un même lot, l'un ayant été interjeté par la Commission de l'escarpement du Niagara pour contester la décision de la municipalité régionale de Peel d'autoriser la demande de morcellement présentée par Marion Percival, et l'autre ayant été interjeté par John David Imrie pour contester la décision de la Commission de l'escarpement du Niagara de refuser de lui délivrer un permis d'aménagement pour le lot en question.

CONTENTUEUX : La Commission devait décider si l'autorisation de morceler le lot était dans l'intérêt du public, conformément au Plan d'aménagement de l'escarpement du Niagara, si les demandes de morcellement et d'aménagement respectaient le plan officiel de la ville de Caledon et si le rapport largeur-longueur serait approprié.

DÉCISIONS : La Commission a donné gain de cause à la Commission de l'escarpement du Niagara et a refusé d'autoriser le morcellement du lot. L'appel concernant le permis d'aménagement a été rejeté.

La Commission a jugé que la demande de morcellement n'était pas dans l'intérêt du public, car elle ne respectait pas les exigences de principe et les règlements pris en application de la *Loi sur la planification et l'aménagement de l'escarpement du Niagara* régissant le lotissement en rubans. La demande était en outre non conforme au Plan officiel de la ville de Caledon, parce qu'elle aurait créé un lot dont le rapport largeur-longueur n'était pas réglementaire.

DATE : Décisions rendues le 14 février 1992.

La municipalité de Durham a été sommée de payer un total de 136 905,60 \$ à la ville de Pickering, au groupe Pickering Ajax Citizens Together et au groupe de résidents de Whitevale et du district. Les demandes en dommages-intérêts faites contre le ministère de l'Environnement ont été rejetées.

DATE : Décision rendue le 26 avril 1991.

CH-90-11

REQUÉRANT :

Rocksprings Enterprises Limited

La société Rocksprings Enterprises Limited a reçu l'autorisation de la part du comité d'autorisation du comté de Grey pour diviser un lot dans le canton de Sydenham. La Commission de l'escarpement du Niagara a par la suite rejeté la décision du comté de Grey.

Cette affaire a entraîné deux appels : la Commission de l'escarpement du Niagara a contesté la décision du comté de Grey, donnant l'autorisation à la société Rocksprings de morceler le lot susmentionné, et la société Rocksprings a contesté celle de la Commission.

CONTENTIEUX :

La Commission devait décider si le morcellement du lot pouvait être autorisé, si le permis d'aménagement devait être délivré et si ces demandes devaient être assorties de conditions.

La commission mixte a donné gain de cause à la Commission de l'escarpement du Niagara et rejeté l'appel interjeté par la société Rocksprings Ltd. Elle a refusé les demandes ayant trait au morcellement du lot et à la délivrance du permis d'aménagement.

DÉCISIONS :

La commission a jugé que la demande faite par la société Rocksprings ne se conformait pas à la *Loi sur la planification et l'aménagement de l'escarpement du Niagara*, aux nouvelles politiques de morcellement découlant du Plan d'aménagement de l'escarpement du Niagara, au paragraphe 50(4) de la *Loi sur l'aménagement du territoire* et à l'objectif du Plan d'aménagement de l'escarpement du Niagara qui est celui d'éviter les effets défavorables cumulatifs sur le paysage de l'escarpement.

DATE : Décisions rendues le 13 septembre 1991.

CH-91-02

REQUÉRANT :

M. et Mme Sebastian Cappellano

L'audience a porté sur deux appels, le premier ayant été interjeté par la Commission de l'escarpement du Niagara pour contester la décision du comité des dérogations de la ville de Mono autorisant le morcellement d'un lot appartenant à M. Cappellano, et le second ayant été interjeté par M. Cappellano pour contester la décision de la Commission de l'escarpement du Niagara de refuser de lui délivrer un permis d'aménagement pour la construction d'un logement unifamilial sur une partie du lot.

CH-90-08

REQUÉRANT :

Mountainview Industrial Parks

Appel portant sur deux questions en litige : le refus, par la Commission de l'escalpement du Niagara, d'acquiescer à une demande faite par le requérant pour accroître le nombre d'utilisations autorisées à l'intérieur d'un centre commercial qui se trouve dans la ville de Flamborough, dans la municipalité régionale de Hamilton-Wentworth, et à une seconde demande visant à modifier le plan officiel de la ville de Flamborough pour que la ville soit désormais désignée « zone urbaine-commerciale » (*Urban Commercial*) au lieu de « zone urbaine-commerciale à usage relié à l'automobile » (*Highway Commercial-Urban*).

CONTENTUEUX :

Le requérant désirait changer la désignation de la ville de Flamborough pour pouvoir exploiter un dépanneur alimentaire, des restaurants, un service du personnel et un bureau, utilisations qui ne sont pas permises en vertu de la désignation actuelle.

DÉCISIONS :

La Commission a changé la désignation des terrains en litige à zone « urbaine-commerciale spécifique » (secteur n° 1) à usage relié à l'automobile » (*Highway Commercial-Urban-Site Specific Area # 1*). Elle a en outre accepté la demande d'appel, à condition que le requérant s'en tienne aux quatre utilisations proposées et qu'il remplisse certaines conditions, à savoir qu'il respecte l'accord sur le plan d'aménagement négocié avec la ville de Flamborough (en particulier en ce qui concerne l'aménagement paysager, l'éclairage et la gestion des déchets), qu'il négocie avec Ontario Hydro pour planter des arbres sur une voie d'électricité adjacente à la propriété et qu'il construise une voie piétonnière.

DATE :

Décision rendue le 21 mai 1991.

CH-90-09

REQUÉRANT :

La municipalité régionale de Durham

La municipalité régionale de Durham a demandé l'autorisation (en vertu de la *Loi sur la protection de l'environnement*) d'aménager un lieu d'enfouissement dans le village de Whitevale, ville de Pickering, municipalité régionale de Durham. La demande devait initialement être exemptée du processus d'évaluation prescrit par la *Loi sur les évaluations environnementales*, mais le ministère de l'Environnement a par la suite soulevé l'exemption accordée à deux lieux d'enfouissement, dont celui qui faisait l'objet de la demande. La ville de Pickering, le groupe Pickering Ajax Citizens Together et le groupe de dommages-intérêts de la ville de Durham et du ministère de l'Environnement pour les coûts associés au retrait de la demande.

CONTENTUEUX :

Loi sur la jonction des audiences

CH-85-03 (1991)

REQUÉRANT : Ontario Hydro (Sud-Ouest)

La société Ontario Hydro a demandé l'autorisation de modifier, pour la clarification et l'autorisation d'acquiescer des droits de propriété dans les régions de Kincardine, Barrie et London afin d'y construire une voie de transport d'électricité. La Commission devait décider si Ontario Hydro serait tenue de déplacer, à ses frais, les résidences et les dépendances qui se trouvent à l'intérieur d'un réseau de 75 mètres de la voie d'électricité.

Plusieurs phrases ont été ajoutées à la condition 22 de l'annexe « A » de la décision rendue, le 20 février 1987, par la commission mixte afin de clarifier le fait que le promoteur ne serait pas tenu de déplacer des résidences s'il est jugé déraisonnable de le faire.

DATE : Décision rendue le 7 mai 1991.

CH-89-09

REQUÉRANTS : Leonard et Ruth Legros

Demande portant sur deux appels : d'une décision du comité de morcellement des terrains du Niagara, qui a rejeté une demande de parcellisation faite par les requérants, et d'une demande de la Commission de l'escarpement du Niagara, qui a refusé aux requérants un permis d'aménagement pour un lot situé dans le village de St. David's, dans la municipalité de Niagara-on-the-Lake.

La Commission devait décider si le lot des Legros se trouve à l'intérieur des frontières administratives du village de St. David's, qui se situe dans la zone désignée « petit centre urbain » (*Minor Urban Centre*), qui permet un plus grand nombre d'utilisations que les zones périphériques. Les frontières administratives du village de St. David's sont actuellement l'objet de négociations entre la municipalité de Niagara-on-the-Lake et la Commission de l'escarpement du Niagara.

La Commission a autorisé le morcellement et accordé les permis d'aménagement demandés à condition que les requérants satisfassent les conditions énoncées.

DATE : Décision rendue le 20 décembre 1991.

Index des décisions

Loi sur la protection de l'environnement

EP-90-02

REQUÉRANT :

Lieu d'enfouissement desservant trois municipalités

Kenora

La corporation de la municipalité de Kenora a demandé l'autorisation d'agrandir le lieu d'enfouissement du canton de Haycock, dans le district de Kenora, et d'en prolonger la vie utile de cinq ans. Le lieu d'enfouissement sert les municipalités de Kenora, Keewatin et Jaffray-Melick.

CONTENUEUX :

N'a pas été en litige la question de l'agrandissement en soi, mais plutôt les conditions assorties à l'autorisation.

DÉCISION :

La Commission a autorisé, sous réserve de certaines conditions, l'agrandissement du lieu d'enfouissement desservant les trois municipalités de Kenora, Keewatin et Jaffray-Melick ainsi que la prolongation de sa vie utile.

DATE :

Décision rendue le 8 novembre 1991.

EP-90-03

REQUÉRANT :

Ville d'Orillia

La ville d'Orillia a demandé l'autorisation d'élargir le secteur desservi par le lieu d'enfouissement de la rue Kitchener pour qu'il accepte, outre les déchets provenant des cantons de Rama et d'Orillia, ceux produits par la ville d'Orillia.

Aucune des parties représentées ne s'est opposée à l'élargissement de la zone desservie, mais elles ne s'entendaient pas sur les conditions d'autorisation. Les parties représentant l'intérêt des résidents s'inquiétaient surtout de l'application des 3 « R » (réduction, réutilisation et recyclage).

DÉCISION :

La Commission a autorisé, sous réserve des conditions soumissionnées, l'extension du secteur servi par le lieu d'enfouissement de la rue Kitchener.

Le requérant est tenu d'élaborer des plans prévoyant la diminution de la quantité de déchets et la mise en oeuvre d'un programme de réduction, de réutilisation et de recyclage; de surveiller la qualité des eaux souterraines et de surface et de mettre en oeuvre des mesures antipollution; d'améliorer la qualité de l'eau touchée par le lieu d'enfouissement; et de créer un comité consultatif chargé d'aider les trois municipalités à respecter les principes de gestion des déchets.

- l'inscription d'un moratoire sur l'aménagement de mares dans la zone naturelle de l'escarpement et sur l'aménagement de mares à vocation non agricole dans les autres zones désignées; et
 - l'établissement de plus grandes restrictions quant aux utilisations qui peuvent être faites des flancs de l'escarpement.
- Le rapport des responsables des audiences devrait être rendu public dans les mois à venir.

Modification 52 au Plan d'aménagement de l'escarpement du Niagara

Le 27 mai 1992, le Conseil des ministres de l'Ontario a modifié le Plan d'aménagement de l'escarpement du Niagara pour que soient soumis à une évaluation rigoureuse les projets d'aménagement de nouveaux lieux d'enfouissement, les projets d'agrandissement de lieux existants et les projets d'enfouissement de déchets autres que ceux dont l'enfouissement est permis dans le Plan actuel. Cette modification a vu le jour en mars 1989, après avoir été recommandée par des groupes de citoyens et plusieurs municipalités de la région de l'escarpement.

Après maintes contestations, des audiences d'une durée de six semaines ont finalement été ouvertes en février 1991.

Les témoignages entendus par le jury ont mis en doute la praticabilité d'aménager des lieux d'enfouissement sur les terrains de l'escarpement, compte tenu de la nature des sols, qui ne sont généralement pas aptes à emprisonner les polluants de manière à éviter la pollution des nappes d'eau souterraine, malgré l'emploi de moyens techniques sophistiqués. Les sept faits constatés lors de l'audience de la commission mixte sur le lieu d'enfouissement de Halton, en février 1989, ont fait ressortir la nature

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hydrogéologique des lieux d'enfouissement proposés. Les réponses données par deux des témoins aux sept questions soulevées par ces constatations sont répertoriées dans le rapport sur la modification 52.

Certains intervenants se sont dits préoccupés par le doublement des procédures prévues par la Loi sur la planification et l'aménagement de l'escarpement du Niagara, la Loi sur les évaluations environnementales et la Loi sur la protection de l'environnement. Le jury a toutefois rejeté ces préoccupations lorsqu'il a été démontré que la législation en vigueur n'empêchait aucune façon les procédures parallèles et que celles-ci étaient assez distinctes en termes d'objet et d'application pour justifier leur traitement séparé en vertu de la Loi sur la planification et l'aménagement de l'escarpement du Niagara.

Il a été recommandé, à l'issue de l'audience, d'adopter la modification 52, sous réserve d'une modification d'ordre rédactionnel. Le texte modifié a depuis été incorporé au Plan d'aménagement de l'escarpement du Niagara.

Les responsables des audiences doivent tenir audience et présenter un rapport à la Commission de l'escarpement du Niagara ainsi qu'à la ministre de l'Environnement. Le rapport doit renfermer un bilan des témoignages présentés ainsi que les recommandations des responsables des audiences.

Après avoir étudié les recommandations des responsables des audiences, la Commission de l'escarpement du Niagara doit présenter ses propres recommandations à la ministre qui, pour sa part, doit soumettre les siennes au lieutenant-gouverneur en conseil. Si les recommandations de la ministre diffèrent de celles formulées par les responsables des audiences, elle doit informer le public de ses intentions. En tel cas, le public a 21 jours pour présenter ses commentaires au Conseil des ministres, à qui il revient d'approuver intégralement les changements apportés au Plan, ou de les approuver sous réserve de certaines modifications.

Ouverte le 12 août 1991, le comité d'audience s'est déplacé à Owen Sound en septembre, y séjournant pendant 10 semaines, pour revenir à Lowville, à l'extérieur de Burlington, le 5 décembre 1992. Les dépositions ont pris fin au début de mars 1992, après 86 jours d'audience et 7 assemblées en soirée. Les responsables des audiences ont ensuite demandé que les derniers commentaires soient faits par écrit et qu'ils soient datés, la date limite étant le dernier jour d'avril.

Des 183-témoins qui ont comparu, 44 l'ont fait en leur propre nom et les autres sont intervenus en faveur d'autrui. Dans quelques cas, les mêmes experts ou agents ont comparu plusieurs fois, représentant un client différent à chaque occasion. Plusieurs motions ayant trait surtout au champ d'application de certaines lois ont été présentées pendant les premières semaines de l'audience. Sont d'un intérêt particulier les motions suivantes :

- La Loi sur les évaluations environnementales devrait-elle s'appliquer à la révision du Plan d'aménagement de l'escarpement du Niagara?
- La Loi sur le projet d'aide financière aux intervenants devrait-elle s'appliquer aux audiences se rapportant à la révision du Plan d'aménagement de l'escarpement du Niagara?
- L'audience devrait-elle se poursuivre par étapes?
- Les responsables des audiences devraient-ils faire des recommandations sur les changements au Plan qui ont trait à des lieux précis? Quelles sont les exigences législatives à satisfaire lorsqu'il y a transfert des responsabilités d'application d'une loi d'un ministère à un autre?
- Parmi les nombreuses objections aux suggestions de la Commission, lesquelles touchent diverses communautés d'intérêts locales et régionales le long du secteur visé par le Plan d'aménagement de l'escarpement du Niagara, qui s'étend sur 725 km, les plus controversées sont les suivantes :
- L'interdiction d'exploiter de nouvelles carrières, ou d'agrandir des carrières existantes, dans la zone rurale de l'escarpement;
- L'interdiction d'aménager des lotissements à faible densité dans la zone rurale de l'escarpement;
- L'établissement de plus grandes restrictions relativement à la création de nouveaux lots dans le secteur visé par le Plan;
- L'annulation de toutes les dispositions visant la soustraction des terres à la culture;
- L'interdiction d'aménager des terrains de golf dans la zone protégée de l'escarpement;
- La démonstration du « besoin public » dans certaines modifications du Plan;

L'escarpement du Niagara et la Commission

Audience sur la révision du Plan d'aménagement de l'escarpement du Niagara

L'article 17 de la Loi sur la planification et l'aménagement de l'escarpement du Niagara prescrit une révision du Plan d'aménagement de l'escarpement du Niagara au plus tard cinq ans après la mise en vigueur du Plan, le 10 juin 1985, et par la suite tous les cinq ans. Aux termes de la Loi, le ministre de l'Environnement doit « demander » la révision. Le 10 juin 1990, le ministre de l'Environnement a donc demandé à la Commission de l'escarpement du Niagara d'entreprendre la première révision.

La Loi sur la planification et l'aménagement de l'escarpement du Niagara stipule la marche à suivre pour informer le public de la révision et solliciter son opinion ainsi que celle des municipalités et des ministères. Toujours en vertu de la Loi, la Commission de l'escarpement du Niagara doit nommer, après la période de consultation du public, un ou plusieurs responsables des audiences chargés d'ouvrir des audiences pour examiner les modifications qu'on se propose d'apporter au Plan. Dans le cas présent, la Commission de l'escarpement du Niagara a nommé responsables des audiences deux membres de la Commission des évaluations environnementales (l'un desquels remplit aussi les fonctions de responsable des audiences pour les appels ayant trait aux questions d'aménagement).

En juin 1990, le ministre de l'Environnement est devenu responsable de l'application de la Loi sur la planification et l'aménagement de l'escarpement du Niagara. Dans le cadre de l'évaluation du rôle et des responsabilités que le Ministère a par la suite effectuée, MM. John Duncanson et John McClellan, responsables des audiences dans le dossier de l'escarpement du Niagara, ont été nommés membres de la Commission des évaluations environnementales. La fonction qui les habilite à tenir des audiences mixtes pour résoudre les appels liés à la délivrance de permis autorisant la réalisation d'entreprises dans le secteur visé par le Plan d'aménagement de l'escarpement du Niagara, ou à des modifications du Plan.

A la fin de 1990 a eu lieu la première révision quinquennale du Plan de l'escarpement du Niagara, conformément à l'article 17 de la Loi sur la planification et l'aménagement de l'escarpement du Niagara. Cette révision, qui marque une nouvelle étape dans la planification de l'escarpement du Niagara, est actuellement l'objet d'une audience qui se poursuit depuis août 1991.

Suivent de brefs rapports sur cette audience, ainsi que sur celle ayant trait aux modifications apportées au Plan pour résoudre la question des lieux d'enfouissement dans l'escarpement, et sur les activités du bureau des audiences de l'escarpement du Niagara.

Le jury a aussi visité les centrales de Nanticoke (combustion de charbon), Niagara (énergie hydraulique) et Darlington (énergie nucléaire), ainsi que le « centre nerveux » de Clarkson, où Ontario Hydro gère la distribution d'électricité, et le Centre Kortright, où sont exposés des modèles de production d'énergie solaire et éolienne.

La société Ontario Hydro a rendu public, en janvier 1992, une version mise à jour de son plan de l'offre et de la demande, qui prévoit une diminution de la demande par rapport à celle anticipée dans le plan initial. Ontario Hydro explique cette baisse de la demande par une meilleure gestion des ressources énergétiques, une plus grande efficacité énergétique et la capacité accrue des producteurs indépendants. Le jury a dû évaluer les répercussions de cette mise à jour sur la portée de l'audience.

En raison de sa grande projection dans le temps (25 ans) et du vaste public qu'il touche, le plan d'Ontario Hydro a soulevé bien des questions, souvent fort complexes, qui demanderont beaucoup d'efforts à résoudre, une tâche à laquelle se consacrera la Commission jusqu'en 1993, sinon au-delà.

bien-fondé du processus d'audience en plusieurs étapes en ce qui concerne la construction de centrales hydro-électriques et le bien-fondé de l'évaluation des effets cumulatifs, et d'évaluer la pertinence des arguments favorisant la décentralisation des sources d'approvisionnement en électricité, l'a-propos des demandes de renseignements de la part d'Ontario Hydro et la portée de certains termes dans le contrat signé par Ontario Hydro et Manitoba Hydro en ce qui concerne la compétence du jury en vertu de la *Loi sur les évaluations environnementales*. Le jury a aussi rendu sa décision à l'égard des demandes d'aide financière supplémentaire.

En septembre 1991, le jury s'est rendu par hélicoptère aux localités de Moosonee, Moose Factory et Kapuskasing afin, d'une part, de visiter des centrales hydro-électriques et les lieux de centrales proposées et, d'autre part, de tenir des assemblées publiques pour permettre aux résidents et aux résidentes de ces localités d'exprimer leurs opinions à l'égard du plan de l'offre et de la demande d'Ontario Hydro.

L'audience de la Société ontarienne de gestion des déchets

La Société ontarienne de gestion des déchets a

demandé l'autorisation de construire un centre de traitement et d'élimination des déchets dangereux,

près de Smithville, dans la péninsule du Niagara.

Le jury a entendu des témoignages relatifs à quatre phases de l'audience. La deuxième phase

a porté sur le choix du système de gestion des déchets et la troisième sur le choix de l'emplacement. Lors de la quatrième phase ont été

présentés les témoignages sur la sélection des techniques et du plan d'aménagement du centre,

et lors de la cinquième les témoignages sur l'évaluation de l'emplacement proposé et les

conséquences environnementales prévues.

L'an dernier, les intervenants qui ont reçu de l'aide financière ont demandé des fonds supplémentaires de 1,4 million en vertu de la *Loi sur le projet d'aide financière aux intervenants*. Comme

tenu de l'information reçue, la Commission était disposée à accorder uniquement 416 889 \$ aux

demandeurs. Après avoir obtenu des renseignements supplémentaires, la Commission a réévalué les demandes et accordé 383 431 \$ de

plus aux intervenants.

La phase des témoignages est presque terminée et la Commission devrait entendre le dernier

plaidoyer au début de l'automne.

L'audience sur le Plan de l'offre et de la demande d'Ontario Hydro

La Commission a entrepris, en avril 1991,

l'audience sur l'évaluation environnementale demandée par la société Ontario Hydro, qui désire

faire approuver son plan de gestion des services d'énergie électrique pour les 25 prochaines

années (*Pour un équilibre énergétique : Ontario Hydro au service de sa clientèle par la planification de l'offre et de la demande d'électricité*).

La Commission a donc entendu à ce jour 219 participants et intervenants pendant 125 jours

de preuves directes et de contre-interrogatoires. À la fin de mars 1992, Ontario Hydro a terminé

de présenter huit témoignages (prévision de la demande, réseaux en place, calcul des coûts,

gestion de la demande, production privée d'électricité, ressources hydrauliques, approvisionnement, production d'origine fossile et sources de

technique). Le jury entendra deux autres témoignages (production d'énergie nucléaire et plans

de l'offre et de la demande) avant que les intervenants soient appelés à plaider leurs causes, puis

à être contre-interrogés par diverses parties, dont Ontario Hydro.

Depuis mars 1991, de nombreuses motions ont été déposées devant le jury pour que celui-ci

examine la possibilité, entre autres, d'admettre de nouveaux participants à l'audience, d'examiner le

L'audience sur la gestion du bois d'oeuvre des terres de la Couronne (évaluation de portée générale)

Au cours de l'an dernier, la Commission des audiences a fini d'entendre quatre grandes plaidoiries présentées dans le cadre de l'évaluation de portée générale demandée par le ministère des Richesses naturelles quant à la gestion du bois d'oeuvre sur les terres de la Couronne. Les opposants à la demande, à savoir

le *Grand conseil du traité n° 3*, l'association des *Métis et des personnes autochtones de l'Ontario*, le *Conseil de la nation nishnawbe-askei et de la tribu Windigo* et la coalition formée de la *Ontario Federation of Anglers and Hunters* et de la

Northern Ontario Tourist Outfitters Association, ont tous terminé leurs plaidoiries, après avoir fait paraître 72 témoins pendant 42 jours d'audience.

Le jury d'audition a aussi entendu les plaidoiries présentées par l'association canadienne des villes mono-industrielles, *Norhtwatch*, le

Syndicat international des travailleurs unis du bois d'Amérique (Canada), l'association forestière de l'Ontario, la *Fédération du travail de l'Ontario*, le *Syndicat des employés et employées de la fonction publique de l'Ontario*, le *Syndicat canadien des travailleurs du papier et la Venture Tourism Association of Ontario*, qui ont fait paraître 56 témoins pendant 21 jours d'audience.

Fidèle à son objectif initial, la Commission a tenu les audiences dans le nord de l'Ontario, puisque les gens qui y habitent et y travaillent sont directement touchés par la gestion du bois d'oeuvre.

Des assemblées publiques ont eu lieu l'an dernier à Red Lake, Kenora, Thunder Bay, Sioux

Lookout, Toronto, Ottawa, New Liskeard et North Bay. La Commission des évaluations environnementales a offert des services en français dans les quatre dernières municipalités, conformément à la *Loi sur les services en français*. Elle a opté cette fois-ci pour l'interprétation consécutive, qui s'est révélée aussi efficace et moins onéreuse que les services d'interprétation simultanée employés par le passé.

Deux grandes questions ont été tranchées :

la durée de l'audience et la participation des

particuliers et des groupes qui ne sont pas

représentés par des avocats. En ce qui concerne

le calendrier de l'audience, le jury a consenti à

ajourner l'audience de plusieurs mois afin de

donner à la coalition regroupant la *Ontario Federation of Anglers and Hunters* et la *Northern Ontario Tourist Outfitters Association* le temps

de préparer sa plaidoirie, puisqu'elle s'était jointe

à l'audience après les autres parties. Le jury a

decidé que le témoignage de la coalition était

important dans sa décision et valait par conséquent

qu'on prolonge l'audience. En ce qui concerne les

témoignages des parties non représentées par

des avocats, et celles disposant de ressources

financières restreintes, la Commission a offert les

services de son coordonnateur d'audience et de

son avocat-conseil pour faciliter les témoignages

écrits et oraux et rendre le processus d'audience

moins hermétique.

L'audience sur la gestion du bois d'oeuvre se

terminera en novembre 1992. Depuis mai 1988, la

Commission a tenu plus de 400 jours d'audience,

reçu des mémoires de plus de 500 témoins,

enregistré 70 000 pages de transcription et reçu

quelque 2 500 pièces.

- 3(b). Renferme des directives précises sur lesquelles s'appuiera la Commission pour cerner les questions pertinentes d'une affaire. après la mise en vigueur du programme d'aide financière décrit au paragraphe 3(a) ci-dessus et avant le début de la seconde étape du programme d'aide financière, celle relative aux coûts de la préparation et de la présentation d'une plaidoirie.
- 4(a). Accorde à la Commission des audiences le pouvoir de déterminer à l'avance les questions sur lesquelles portera une audience ainsi que la forme que prendra cette audience.
- 4(b). Accorde à la Commission des audiences le pouvoir de rendre des décisions sur des questions de compétence, de pertinence et de procédure soulevées à l'étape du financement et évoquées par le comité d'aide financière ou présentées dans les motions faites par le proposant ou les intervenants.
- 5(a). Indique clairement que la *Loi sur l'exercice des compétences légales* ne s'applique pas aux décisions de subvention et qu'il n'est pas obligatoire de tenir une audience pour chacune des décisions de subvention ou chacune des décisions ayant trait aux demandes d'aide financière supplémentaire.
- 5(b). Prescrive explicitement que tout appel d'une décision prise par le comité d'aide financière quant à une question de droit doit être interjeté devant la Haute Cour de l'Ontario et non devant le ministre ou le Conseil des ministres.

6. Renferme des dispositions autorisant le comité d'aide financière à subventionner les services d'avocats, de conseillers, de témoins experts, d'administrateurs et de l'intervenant jugés nécessaires pour la présentation des faits.
7. Prescrive que le comité d'aide financière, s'il relève de la Commission, soit composé d'au plus trois personnes prises au sein de la Commission et nommées par la présidente de la Commission.
8. Etablit clairement les modalités administratives des programmes d'aide financière aux intervenants, que ces programmes soient gérés par un comité indépendant, la Commission des audiences ou conjointement par un comité d'aide financière et la Commission, comme la *Loi sur le projet d'aide financière aux intervenants* le prescrit à l'heure actuelle.
- Le procureur général a annoncé, le 25 mars 1992, la décision du gouvernement de l'Ontario de proroger de quatre ans la *Loi sur le projet d'aide financière aux intervenants*. Le gouvernement a pris cette décision après avoir étudié le rapport Bogart-Valiante, qui adhère aux objectifs de la Loi. Le procureur général a par ailleurs indiqué que le gouvernement examinerait les recommandations consignées dans le rapport et qu'il proposerait ses suggestions pour une loi permanente après consultation avec les parties intéressées.

Examen de la Loi de 1988 sur le projet d'aide financière aux intervenants

Promulguée le 1^{er} avril 1989, la *Loi de 1988 sur le projet d'aide financière aux intervenants* prescrit la création d'un projet pilote de trois ans visant à aider financièrement les intervenants qui défen-

dent l'intérêt du public devant la Commission de l'énergie de l'Ontario, la Commission des évaluations environnementales et les commissions mixtes. La Loi amende par ailleurs les lois habitantes de ces commissions pour que celles-ci puissent accorder des dommages-intérêts. Aux termes du paragraphe 16(1) de la Loi, la partie I de cette même loi, qui se rapporte à l'aide financière accordée aux intervenants, devait être abrogée trois ans après la mise en vigueur de la Loi, mettant effectivement un terme au projet pilote le 1^{er} avril 1992.

À l'automne 1991, les ministères du Procureur général, de l'Énergie et de l'Environnement ont formé un groupe de travail chargé d'examiner la *Loi sur le projet d'aide financière aux intervenants*. Le groupe de travail a retenu les services des professeurs W.A. Bogart et Marcia Valliante, tous deux de la faculté de droit de l'université de Windsor, pour effectuer l'examen, qui s'est échelonné sur quatre mois, d'octobre 1991 à janvier 1992. Pendant cette période, le groupe a reçu plus de 90 mémoires de la part de particuliers et d'organismes intéressés.

Dans son mémoire présenté au groupe de travail, la Commission des évaluations environnementales a indiqué qu'elle souscrivait aux objectifs de la Loi et qu'elle souhaitait que le programme d'aide financière soit consigné de façon permanente dans le texte législatif. Elle a en outre signifié que le programme d'aide financière prévu par la Loi avait généralement profité aux audiances; d'une part, en donnant davantage de possibilités

au public d'y participer et, d'autre part, en réglementant l'ancien régime d'aide financière selon lequel l'aide était accordée par décret selon les besoins du moment.

Recommandations

Le mémoire présenté par la Commission renferme huit recommandations, voulant que la *Loi sur le projet d'aide financière aux intervenants* dans sa version modifiée :

1. Prescrive la création d'un organisme indépendant chargé d'administrer tous les programmes d'aide financière, y compris le traitement des demandes d'aide financière (initiales ou supplémentaires) présentées par les intervenants. (Cette recommandation vient en priorité; si elle est adoptée, les recommandations formulées ci-dessous pourraient devenir superflues ou nécessiter certains changements.)
2. Renferme des dispositions spéciales visant soit à limiter les sommes mises à la disposition des postulants publics pour préparer leur plaidoirie, soit à stipuler que les sommes seront accordées aux intervenants en proportion des fonds que reçoivent les postulants publics.
- 3(a). Renferme des dispositions stipulant que l'aide financière soit accordée aux intervenants le plus tôt possible dans le cadre du processus d'autorisation. Cette disposition permettrait aux intervenants d'identifier les griefs dès le début du processus et de s'entendre avec les parties qui partagent des intérêts semblables dans le but de former une coalition ou de coordonner la préparation et la présentation de leur intervention.

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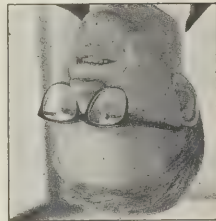
Grace Patterson



Jim Robb



Alan William Roy



Le Juge
Edward Saunders



Elaine B. Tracey

GRACE PATTERSON, est présidente de la Commission des évaluations environnementales depuis février 1990, après avoir rempli les fonctions de vice-présidente, de 1986 à 1990. Avant d'être nommée à la Commission, Mme Patterson a exercé le droit de l'environnement pour le compte de l'Association canadienne du droit de l'environnement. Elle a aussi été administratrice de plusieurs organismes de défense de l'environnement et a siégé au Comité consultatif des sciences de la Commission mixte internationale de même qu'au Conseil canadien de la recherche sur les évaluations environnementales. Mme Patterson a aussi été maître de conférence en matière de droit de l'environnement à la Faculté de droit de l'université Queen's.

JIM ROBB, est vice-président à plein temps au sein de la Commission des évaluations environnementales et est également membre de la Commission d'appel de l'environnement. Il est titulaire d'un baccalauréat en sciences, d'un diplôme en foresterie et d'une licence de pilote professionnel. Avant d'être nommé à la Commission, en septembre 1990, M. Robb a géré sa propre entreprise d'entretien des arbres en milieu urbain. Il a également été président du mouvement *Save the Rouge Valley System*, où il a mis à profit ses connaissances de la gestion des bassins hydrographiques. M. Robb a été rédacteur pour de nombreuses publications et a réalisé la photographie qui orne la couverture du rapport de la Commission royale sur l'avenir du secteur riverain de Toronto, intitulé *Un point tournant*.

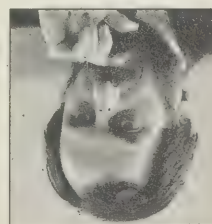
ALAN WILLIAM ROY, de Brighton, est membre à temps partiel de la Commission depuis avril 1987. Il est diplômé en sciences de l'université Sir George Williams, à Montréal, et de l'université Queen's, à Kingston. M. Roy possède une vaste expérience dans le domaine de la protection des pêches. Il occupe actuellement le poste de directeur au sein de l'Union of Ontario Indians. LE JUGE EDWARD SAUNDERS a été nommé à la Commission en mai 1990 pour présider l'audience du Plan de l'offre et de la demande d'*Ontario Hydro*. Il siège à la Cour de justice de l'Ontario (anciennement la Cour suprême de l'Ontario) depuis maintenant 14 ans, après avoir exercé le droit à Toronto. M. Saunders est diplômé de l'Université de Toronto et de la faculté d'Osgoode Hall.

ELAINE B. TRACEY est membre à temps partiel de la Commission depuis octobre 1987. Elle oeuvre pour l'environnement dans sa ville de résidence, Eganville, et a dirigé un comité chargé de nettoyer les rives de la rivière de cette localité. Elle est actuellement directrice de la *Valley Savings Credit Union* (comité de Renfrew) et présidente sortante de l'Association commerciale régionale d'Eganville. Mme Tracey a été désignée personnalité du monde des affaires de l'année. Elle travaille actuellement à temps partiel dans une entreprise de presse familiale.



Anne Koven

ANNE KOVEN, de Toronto, est vice-présidente à plein temps. Nommée à la Commission en avril 1987, M^{me} Koven est titulaire d'une maîtrise en administration publique de l'université Queen's. De 1981 à 1986, elle a dirigé l'étude sur le lieu d'enfouissement de la vallée supérieure de l'Outaouais commandée par le ministère de la Santé de l'Ontario. Elle a travaillé dans l'industrie minière et au sein du Conseil consultatif sur la santé et la sécurité au travail de l'Ontario.



Alan D. Levy

ALAN D. LEVY, de Toronto, est vice-président à plein temps. Nommé à la Commission en mai 1990, il est titulaire d'un baccalauréat ès arts et d'un baccalauréat en droit de l'Université de Toronto. Il a exercé le droit du contentieux pendant 18 ans devant les cours et les tribunaux. M. Levy est l'un des fondateurs de l'Association canadienne du droit de l'environnement, et il a fait partie de son conseil d'administration pendant 20 ans. En avril 1991, il a été nommé conjointement à la Commission d'appel de l'environnement.



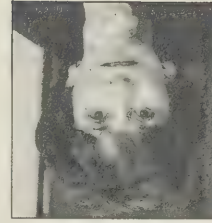
Elie W. Martel

ELIE W. MARTEL, de Capreol, est vice-président à plein temps. M. Martel a cumulé les fonctions d'enseignant et de directeur d'une école primaire jusqu'en 1967, année où il a été élu à l'Assemblée législative. Il a été député néo-démocrate de Sudbury-Est jusqu'en 1987 et chef parlementaire de son parti de 1978 à octobre 1985. Pendant ses années comme député, M. Martel s'est beaucoup préoccupé des dossiers environnementaux. Il est en outre l'auteur de deux importants rapports sur la santé et la sécurité au travail. Il a été nommé à la Commission en mars 1988.



John McClellan

JOHN MCCLELLAN, de Brantford, est membre à temps partiel de la Commission. Géographe de profession, il travaille dans le domaine de l'aménagement du territoire depuis 30 ans. De 1974 à 1988, il a été directeur général de la Commission de l'aménagement du territoire de l'Île du Prince-Édouard. Depuis 1989, il est responsable des audiences en vertu de la *Loi sur la planification et l'aménagement de l'escarpement du Niagara*. Il est devenu membre conjoint de la Commission le 1^{er} janvier 1991.



Mary G. Munro

MARY G. MUNRO, de Burlington, est vice-présidente générale à plein temps. Infirmière de profession, elle est active au sein de sa localité depuis de nombreuses années, ayant été membre de divers conseils et commissions. M^{me} Munro a été conseillère municipale, conseillère régionale et maire de la ville de Burlington. Elle a été nommée à la Commission le 1^{er} septembre 1981.



Paul F.J. Eagles

PAUL F.J. EAGLES, de Cambridge, est membre à temps partiel de la Commission depuis décembre 1987. M. Eagles est titulaire d'un baccalauréat de l'université de Waterloo, d'une maîtrise en zoologie et en mise en valeur des ressources de l'université de Guelph et d'un doctorat en aménagement urbain et régional de l'université de Waterloo. Il est actuellement membre de la faculté d'études des loisirs à l'université de Waterloo. M. Eagles a publié de nombreux ouvrages sur l'écologie appliquée, la gestion des ressources et les loisirs de plein air.



Len Gertler

LEN GERTLER est vice-président à plein temps. Avant de se joindre à la Commission, en mai 1990, il a été professeur à l'École de planification urbaine et régionale à la Faculté des études environnementales de l'université de Waterloo. Il est membre associé de l'Institut canadien des urbanistes. M. Gertler a mis à profit ses connaissances en matière de planification, d'aménagement et de gestion de l'environnement tant dans le contexte urbain que régional, au Canada comme à l'étranger. Il a travaillé au sein d'organismes des Nations Unies en Asie du Sud-Est et dans les Caraïbes, et au sein de l'Agence canadienne de développement international. Il a publié de nombreux ouvrages sur l'environnement et la planification. En avril 1991, il a été nommé conjointement à la Commission d'appel de l'environnement.



Esther Jacko

ESTHER JACKO, de Birch Island, est membre à temps partiel de la Commission depuis avril 1989. Mme Jacko est gestionnaire des terres du Conseil de la première nation de Whitefish River. Elle a représenté les autochtones au sein du *Algoma-Maitoulin Nuclear Awareness Group* et est membre de la *North Channel Preservation Society*, qui s'emploie à préserver le patrimoine historique et environnemental de Nehahupkung, aussi appelé Casson's Peak, à Bate Fine. Elle est actuellement membre du Conseil canadien de la recherche sur les évaluations environnementales.



Jim Kingham

JIM KINGHAM est vice-président à plein temps. Il travaille dans le domaine de l'environnement depuis plus de vingt-cinq ans en qualité de chercheur scientifique, de négociateur et de gestionnaire. Il a rédigé le projet de loi sur l'immersion des déchets en mer, négocié certaines dispositions du droit de la mer relatives à la protection de l'environnement marin, tout en présidant le Groupe de travail permanent de l'organisation maritime des Nations Unies. Il a également participé à l'élaboration du Programme fédéral des urgences environnementales, de la stratégie d'assainissement des Grands Lacs et des travaux du Service de la protection de l'environnement. Avant de se joindre à la Commission, en 1987, M. Kingham a été directeur général de la Région de l'Ontario pour l'Environnement Canada et président canadien du Conseil de la qualité de l'eau de la Commission mixte internationale.

Les membres de la Commission



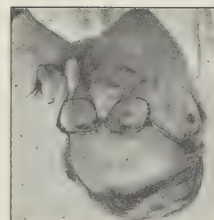
George Connell



Kate Davies



Barbara Doherty



John Duncanson

GEORGE CONNELL, de Toronto, est membre à temps partiel de la Commission depuis janvier 1990. Il a déjà été recteur de l'Université de Western Ontario et de l'Université de Toronto. Officier de l'Ordre du Canada et membre associé de la Société royale du Canada, il adhère aussi à diverses sociétés professionnelles, notamment la Société canadienne de biochimie, dont il a été président en 1973 et 1974, l'*American Society of Biological Chemists* et la Société canadienne d'immunologie. M. Connell préside actuellement la Table ronde nationale sur l'environnement et l'économie.

KATE DAVIES, d'Ottawa, est membre à temps partiel de la Commission depuis juillet 1990. Elle est titulaire d'un doctorat en biochimie de l'université d'Oxford, en Angleterre. Avant d'être nommée à la Commission, Mme Davies a rempli les fonctions de directrice de l'Office de la protection de l'environnement de Toronto. Elle a aussi été au service du Conseil consultatif scientifique de la Commission mixte internationale et du Conseil canadien de la recherche sur les évaluations environnementales. Mme Davies est actuellement présidente du cabinet *Ecosystems Consulting Inc.*

BARBARA DOHERTY, de Toronto, est vice-présidente à plein temps depuis novembre 1988. Elle a obtenu son baccalauréat en sciences de l'université de Western Ontario en 1977 et son diplôme en droit d'Osgoode Hall en 1980. Elle a été reçue au barreau en 1982. Mme Doherty a exercé le droit civil à Toronto et a comparu à titre d'avocate devant un large éventail de tribunaux judiciaires et de tribunaux administratifs jusqu'à sa nomination à la Commission.

JOHN DUNCANSON, d'Orangeville, est membre à temps partiel de la Commission. Il a obtenu un baccalauréat en arts de l'Université de Toronto en 1947 et un certificat en administration des affaires en 1968. Il a occupé divers postes de direction à la compagnie de téléphone Bell du Canada entre 1947 et 1969 et a été directeur de l'association des anciens de l'Université de Toronto de 1969 à 1974. En 1975, il a été nommé responsable des audiences en vertu de la *Loi sur la planification et l'aménagement de l'escapement du Niagara*. Il est devenu membre de la Commission le 1^{er} janvier 1991.

préparés. À cet égard, la Commission favorise un meilleur programme d'aide financière aux groupes de citoyens qui désirent témoigner devant la Commission. Les membres de la Commission s'efforcent activement à donner parole aux parties intéressées en diffusant les avis d'audience dans les différents médias, en tenant des réunions dans les hôtels de ville, en se rendant sur les lieux qui font l'objet d'une enquête, en offrant des services d'interprétation aux francophones et aux autochtones, en simplifiant le jargon des avocats et des techniciens et, enfin, en simplifiant les procédures susceptibles d'intimider le grand public. La Commission est par ailleurs ouverte à toute suggestion qui pourrait améliorer davantage le processus d'évaluation environnementale. Le présent rapport annuel est plus concis et plus simple que par le passé, comme le veut l'impératif de réduire les coûts. Les lecteurs pourront néanmoins y puiser des renseignements utiles qui les aideront à mieux comprendre le rôle de la Commission des évaluations environnementales et l'ampleur des efforts qu'elle déploie pour améliorer la qualité des audiences et de ses décisions.

Enfin, je désire annoncer le départ de M. Richard Pharand, qui a été au service de la Commission à temps partiel entre 1986 et 1992. M. Pharand a apporté beaucoup de talent et d'énergie à la Commission et nous lui souhaitons tous un franc succès dans ses entreprises futures.

Grace Patterson.

Grace Patterson

d'avantage de temps, et donc de ressources humaines, à la préparation des cas avant la présentation des preuves.

La Commission fait actuellement l'essai de diverses mesures qui débordent le cadre habituel du droit administratif, fondé sur la confrontation. Elle sollicite des pouvoirs juridiques bien définis qui lui permettraient d'ordonner de nouveaux moyens de règlement de conflits et d'en surveiller la mise en oeuvre. La Commission désire, par exemple, éliminer la procédure d'interrogatoire et de contre-interrogatoire dans certaines parties des audiences au profit, lorsque cela est possible, du mode d'action propre aux réunions et aux enquêtes publiques. Elle voudrait aussi être en mesure de mener plus souvent ses propres enquêtes et disposer d'une information plus complète, obtenue plus rapidement. Elle ne veut pas pour autant passer outre aux questions qui intéressent les participants aux audiences, ni leur refuser leur droit légitime de se faire entendre. Il est aussi convenu que les audiences seront toujours ouvertes et accessibles au public. En somme, la Commission espère qu'un mode d'action mixte (confrontation et enquête) simplifiera le processus d'évaluation et le rendra moins hermétique au grand public.

La participation du public n'est pas un voeu pieux pour la Commission. Dans ses audiences, elle cherche concrètement à résoudre les plaintes adressées par des particuliers et des groupes de citoyens qui sont écartés du processus d'évaluation par des spécialistes, des promoteurs disposant d'un solide appui financier et des règles intimidantes. En améliorant l'examen préalable de l'évaluation, la Commission aiderait les citoyens et les citoyennes à être mieux informés et mieux

Message de la présidente



Deux circonstances caractérisent assez bien l'année qui vient de s'écouler : récession économique et, partant, restrictions budgétaires dans l'ensemble de la fonction publique. Nous souhaitons tous un revirement

économique, mais il est clair que ce revirement ne peut plus se faire au dépens de l'environnement, force étant d'admettre qu'environnement et

économie sont unis par des liens d'inter-

dépendance étroits. Sans de vastes ressources

halieutiques ou forestières, il est clair que les

industries extractives ne feraient pas long feu et

que nous en souffririons les conséquences. Bref,

la destruction de l'environnement ne profite à

personne.

La protection de l'environnement est devenue

une préoccupation internationale. La Commission

royale sur l'avenir du secteur riverain de Toronto,

présidée par David Crombie, a confirmé toute

l'importance que doivent prendre les écosystèmes

dans nos décisions de planification. Le Congrès

de Rio a éveillé l'attention du monde entier aux

enjeux de la biodiversité et du réchauffement de

la planète. S'il est une chose qui s'imprime de plus

en plus dans la conscience universelle, c'est bien

que les dégâts environnementaux ont des

répercussions qui dépassent leur cadre local. La

Commission des évaluations environnementales

n'est pas en marge de cet éveil, comme en

témoigne son souci de mieux prévoir les effets

cumulatifs sur l'environnement des entreprises

humaines et d'améliorer le processus de

consultation du public.

L'année 1991 a signalé un renouveau en

Ontario. Le ministère de l'Environnement a

entrepris un examen en profondeur du processus

d'évaluation environnementale et espère pouvoir

amender la loi à l'automne 1992. Dans l'attente de

son examen, la *Loi sur le projet d'aide financière*

aux intervenants restera en vigueur pendant une

autre période de quatre ans, à compter du 1^{er} avril

1992. La Commission, pour sa part, s'active à

changer ses pratiques, sachant que les audiences

ne peuvent durer aussi longtemps que le

voudraient parfois les participants.

L'année 1992 devrait amener la conclusion

de deux grandes audiences : la demande d'auto-

risation présentée par la Société ontarienne de

gestion des déchets relativement aux installations

de traitement et d'élimination des déchets

dangereux, et l'évaluation de portée générale

du ministère des Richesses naturelles ayant trait

à la gestion du bois d'oeuvre sur les terres de la

Couronne. L'audience se rapportant au Plan de

l'offre et de la demande d'Ontario Hydro se

poursuivra pendant encore au moins un an. La

Commission espère n'avoir plus à tenir d'aussi

longues audiences à l'avenir.

La Commission s'applique depuis quelque

temps déjà à améliorer la qualité et du processus

d'évaluation et des décisions qu'elle rend. Ces

objectifs seront atteints grâce à une meilleure

gestion des cas soumis à son attention, à une

formation accrue de ses membres et de son

personnel et, dans la mesure du possible, par

l'emploi de nouveaux moyens de règlement de

différends. Plus particulièrement, elle accordera

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Pour obtenir des renseignements, veuillez communiquer avec le
 Secrétaire de la Commission, Commission des évaluations environnementales
 C.P. 2382, 2300, rue Yonge, bureau 1201, Toronto (Ontario) M4P 1E4
 Tél. : (416) 323-4806.



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ENVIRONMENTAL ASSESSMENT BOARD ANNUAL REPORT



Fiscal Year ended March 31, 1993



ENVIRONMENTAL ASSESSMENT BOARD ANNUAL REPORT

Fiscal Year ended March 31, 1993

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Further information is available from:

The Board Secretary, Environmental Assessment Board
P.O. Box 2382, 2300 Yonge Street, Suite 1201, Toronto, Ontario M4P 1E4
Tel: (416) 323-4806



Il existe une version française du présent document

Chair's Message

Like everyone whose mission it is to serve the Ontario public, the Environmental Assessment Board must find ways to continue to do its job in a time of shrinking government resources. Environmental Assessment Hearings must always be an economical means of ensuring that new projects are environmentally sound and create a better Ontario.

The Board holds different types of hearings. Some members are cross-appointed to hear Niagara Escarpment development permit appeals. These hearings do not involve lawyers and usually last less than a day. Niagara Escarpment Plan Amendment hearings are more complex and involve counsel representing the applicant and other major interests. Applications involving the Niagara Escarpment and local official plans often require hearings under the *Consolidated Hearings Act*. If they relate only to development permits and severances, these hearings generally are completed within one day.

Hearings under the *Environmental Protection Act* which involve expansions of existing landfills are usually relatively short, but the Board holds preliminary hearings in order to identify parties, clarify issues and establish an efficient process. The process may include written evidence and answers to written questions as well as meetings between the parties, with or without a Board facilitator, to try to limit issues and identify areas of contentious evidence. A date for receiving funding applications is also set at the preliminary hearing, as is a date for a funding hearing. Once funding issues have been determined, the main hearing starts.

Our most contentious and lengthy hearings are those under the *Environmental Assessment Act* or joint board hearings under the *Consolidated Hearings Act* which involve the *Environmental Assessment Act* and the *Planning Act*. These hearings often involve multi-million dollar undertakings or plans which would set the ground rules for planning of costly projects over many years. The complexity of the undertaking and the style of hearing, following the *Statutory Powers Procedure Act*, have often combined to make the hearing process unacceptably expensive and time-consuming.

The Board has been taking action on several fronts.

Board members and senior staff met regularly and often during the first part of 1993 to develop a strategic plan which we will use to chart our course over the next several years. We agreed that the Board's most important purpose is to make good decisions for the protection, conservation and wise management of the Ontario environment, using both the traditional hearing process and new, creative techniques. There are more details later in this report.

We have been very fortunate in adding to our staff an Executive Co-ordinator, Gail Morrison. Gail ran the hearing office for the Hydro Demand/Supply Plan hearing and, in addition to administrative responsibilities, performed an invaluable liaison function with the parties. We intend to have Gail work as the case manager for major hearings before the Board and to provide staff guidance and training so that staff members will continue to improve their abilities to manage the Board's caseload.

Our dedicated and hard-working staff are able to play a more innovative and proactive role than in the past; for example, they provide potential parties with draft procedural directions and each others' contact person so that the hearing schedule and issues can be discussed prior to the preliminary hearing. Staff members

are the front line in pre-hearing matters, and the Board relies on their ability to recognize and prevent problems early in the process.

New part-time Board members Linda Pugsley, Bob Edwards, and David Evans bring new perspectives as well as a great deal of enthusiasm and hard work. We welcome them and hope they will be with us for the long term.

A worthy challenge to staff and Board members is Management Board Secretariat's "plain language" initiative. We support this idea and are trying to use a simpler and more direct style for Board decisions, public notices and guides on how to participate in hearings. Our decisions have to make sense to anyone interested enough to read them -- not just to lawyers, scientists and specialists in the EA process.

Although intervenor funding has undoubtedly improved the quality of the information provided at hearings, it has also lengthened the hearing process. Based on our experience, we are applying the criteria in the *Intervenor Funding Project Act* and our procedures to emphasize that funded interventions must help the Board to understand the issues and, at the same time, reduce duplication of evidence and the length of the hearing.

In the joint board Ontario Hydro West of London transmission line hearing, our Executive Co-ordinator met with the potential parties to coordinate their cases and their interests. She also assisted in the formation of an umbrella intervenor group, and took part in negotiations to identify the primary issues. After consultation with the parties, the hearing panel set a time frame for the hearing as a whole and for individual segments, so that progress can be measured. We plan continuous case management throughout this hearing, aiming to set a new standard of streamlined hearings for major applications under the *CHA*.

Pre-hearing settlement conferences are now held for most hearings expected to last longer than a few days. During these conferences, a Board member (who will not be on the hearing panel) attempts to get agreement about limiting issues and providing further technical information, if necessary, so the hearing will move expeditiously. Our first successful experience with this type of session was with the Storrington Landfill hearing, where substantial agreement was reached on technical issues and on further work to be undertaken by the proponent. This allowed the hearing to proceed without interruption once it began.

A recent example of the effectiveness of pre-hearing settlement conferences is the Eastview Landfill. Here, a Board member became involved in experts' scoping meetings as a facilitator when it appeared that these talks were breaking down. As a result of the facilitation and the parties' arguments, the hearing of evidence was completed in four days, rather than the 16 - 20 days originally estimated. In the Green Lane Landfill hearing, the estimated hearing time had been four weeks, but after a pre-hearing settlement conference the hearing was completed in seven days. In both of these examples, the hearing itself focused on the issues of real concern to the parties. We believe that this type of issue resolution allows communities to have more say over decisions which affect them.

Given our positive experiences with alternative dispute resolution conducted by our Board members, we are organizing further training for Board members and staff. As will be described later in this report, a group of University of Toronto students, with direction from one of our members, examined the use of alternative dispute resolution in the Board's process, with specific recommendations for putting these ideas into practice. As part of our strategic plan follow-up, we are looking at the experience of other tribunals as well as organizing training for the fall of 1993.

For the longer term, we are working with other tribunals to suggest amendments to the *Statutory Powers Procedure Act* which would allow more innovation in the hearing process. Tribunals should gather evidence fairly, but without necessarily allowing parties to call, examine and cross-examine witnesses endlessly. The use of alternative dispute resolution techniques should also be recognized in the statute.

Meanwhile, the Board has decided that in plan and program type hearings where the issues are complex and the policies significant, we cannot rely solely on adversarial methods. We have now seen two major plan-type cases (Timber Management and the Ontario Hydro Demand/Supply Plan) which have created the impression that all hearings are much too long and expensive. We believe that these types of undertakings should be considered in a hearing context, and that we must find more effective methods of conducting these hearings. We think an investigative approach at the beginning of the process should be adopted, which would then be followed by examination and cross-examination on limited issues. More specifically, a plan EA hearing might involve several steps, the first of which would be an open public forum in which the Board would hear briefs and submissions on the EA document from a wide variety of community interests. A Board report identifying and defining the major issues of the plan could then be issued. A hearing would take place in the usual adjudicative style with the proponent and intervenors, but within the framework of already defined issues. The Board would then follow its practice of releasing a written decision with reasons.

We will also be assessing each joint board hearing for its readiness to proceed even if proponents fail to follow all of the procedural requirements under each piece of legislation under which the hearing is constituted. This

accords with the Divisional Court's opinion in response to a stated case from the joint board considering the Ontario Hydro West of London transmission line undertaking. An earlier joint board decision on the RSI Landfill application had said that the joint board did not have jurisdiction to proceed with a hearing because the proponent was not ready to proceed on at least two matters requiring a hearing. The Divisional Court in the Hydro stated case commented on the RSI decision and disagreed with that conclusion. It confirmed, however, that each joint board has the ability to control its process and ensure that the applications offer enough information to hold a hearing.

It is possible that early registration by proponents under the *Consolidated Hearings Act*, in response to the Divisional Court's opinion, may increase the perceived length of hearings. Proponents may register earlier and expect joint boards to be involved in assessing readiness for hearings earlier in the process. More preliminary meetings would then be necessary, depending on the state of readiness of particular applications. Nevertheless, we will establish joint boards and have them determine how each hearing will proceed. We will strive for a more integrated, timely process but we must also guard against the hearing process becoming a forum for the design of the undertaking rather than a hearing on whether or not approval should be given.

We expect that for undertakings which fall within categories frequently considered by the Board, proponents will have the benefit of generic guidelines being developed by the MOEE which set out with some clarity what is expected. Intervenors will be able to use these requirements to test the undertaking. The common understanding of EA requirements for specific types of undertakings should also assist in narrowing or limiting issues, especially if time constraints have been imposed.

Over the past two years, training for members has included seminars and hands-on workshops on such topics as mediation techniques, decision-writing, skills training for chairing hearings and the relationships between the *Planning Act* and environmental planning. We have also scheduled presentations at regular Board meetings on such issues as negotiations conducted by Aboriginal people, siting facilities where there is a willing host, and setting time limits for hearings. New members receive orientation and are encouraged to attend hearings as observers before they are paired with experienced members to comprise a panel of the Board. As an additional aid for all members, we are providing a reference binder containing summaries of Environmental Assessment Board cases.

We recognize the government's budget problems and the urgent need for efficiencies. Members and staff are working hard on improvements and innovations, considering the interests of both the proponent and intervenors, and the necessity for thorough and respected decisions. While we understand the importance of communication with the public, this report was produced in-house and is being distributed to a targeted audience to save money.

The Board is committed to the development of an effective and efficient hearing process that respects the principles of fairness, promotes constructive public participation and results in environmentally sound and affordable decisions.

A handwritten signature in dark ink, appearing to read "Grace Patterson", followed by a horizontal line.

Grace Patterson
Chair

Members of The Board

Grace Patterson has been the Board Chair since February, 1990. She practised environmental law with the Canadian Environmental Law Association until her appointment to the Board as a Vice-Chair in 1986. She was a director of several environmental organizations and served on the Science Advisory Board of the International Joint Commission and on the Canadian Environmental Assessment Research Council. Ms. Patterson was also a special lecturer on environmental law at Queen's University Law School.

Dr. George Connell is a part-time Vice-Chair from Toronto, appointed to the Board in January, 1990. He is a former president of the University of Western Ontario and the University of Toronto, an officer of the Order of Canada and a Fellow of the Royal Society of Canada. His memberships in professional societies include the Canadian Biochemical Society (president, 1973-74), the American Society of Biological Chemists and the Canadian Society for Immunology. Dr. Connell chairs the National Round Table on the Environment and the Economy.

Kate Davies is a part-time member from Ottawa, appointed to the Board in July, 1990. She holds a doctorate in Biochemistry from Oxford University in England and prior to her appointment was Manager of the City of Toronto's Environmental Protection Office. She has also had appointments to the International

Joint Commission's Science Advisory Board and the Canadian Environmental Assessment Research Council. She is currently the president of Ecosystems Consulting Inc.

Barbara Doherty is a full-time Vice-Chair from Toronto appointed to the Board in November, 1988. She graduated from the University of Western Ontario with a B.Sc. in 1977 and from Osgoode Hall Law School in 1980. She was called to the Bar in 1982. Ms. Doherty practised civil litigation in Toronto and appeared before a wide variety of courts and administrative tribunals until her appointment to the Board.

John Duncanson is a part-time member from Orangeville. Mr. Duncanson obtained a B.A. from the University of Toronto in 1947 and a Business Certificate in 1968. He was employed in various management appointments with Bell Telephone Company from 1947 to 1969, was the Director of the Department of Alumni Affairs at the University of Toronto from 1969 until 1974. He became a Hearing Officer under the Niagara Escarpment Planning and Development Act in 1975. He was cross-appointed to the Board on January 1, 1991.

Dr. Paul F.J. Eagles, is a part-time member from Cambridge, appointed to the Board in December, 1987. Dr. Eagles holds a B.Sc. in Biology from the University of Waterloo, an M.Sc. in Zoology and Resource Development from the University of Guelph and a Ph.D. in Urban and Regional Planning from the University of Waterloo. He is presently a faculty member in the Department of Recreation and Leisure Studies at the University of Waterloo. Dr. Eagles has published extensively on applied ecology, resource management and outdoor recreation.

Robert Edwards is a part-time member of the Board appointed to the Board in July, 1992. He obtained a B.A. from Glendon College of York University in 1972, and an LL.B. from the University of Toronto in 1977. He was called to the Bar of Ontario in 1979, and has practised law in Thunder Bay since then. The focus of his practice has been on administrative law, with particular emphasis on labour and employment law. He has acted as counsel for a number of groups concerned with environmental matters throughout Northwestern Ontario.

David Evans is a part time Board member from Toronto appointed in July 1992. He is an experienced environmental mediator, facilitator and trainer, and has spoken widely on issues related to public consultation and community affairs. From 1980 to 1985, David Evans operated a mediation and advocacy consultancy in Calgary, Alberta. After leaving his consultancy, he became Manager, Community Affairs for the Ontario Ministry of the Environment. In that capacity, Mr. Evans was responsible for supporting the implementation of the Ministry policy on public consultation including developing consultation training materials for Ministry staff. Presently, David Evans is a community affairs consultant working out of Toronto. He provides public consultation, conflict resolution and strategic communications services to his public and private sector clients. Mr. Evans received his Bachelor of Arts (Anthropology) from McMaster University and his Master of Arts (Sociological Anthropology) from the University of Calgary. He is also a certified teacher in Alberta and Ontario and has taught for five years.

Len Gertler is a full-time Vice-Chair, appointed to the Board in May, 1990. He is a Professor Emeritus, University of Waterloo, and a Fellow of the Canadian Institute of Planners.

He has combined an interest in planning, development, and environmental management in both an urban and regional context, and in Canada and abroad. Foreign assignments have included work in Southeast Asia and the Caribbean for United Nations agencies as well as the Canadian International Development Agency. He is the author and editor of several books on environmental and planning issues. In April 1991, he was cross-appointed to the Ontario Environmental Appeal Board.- 3 -

Esther Jacko is a part-time member of the Board from Birch Island, appointed in April 1989. Ms. Jacko is the Lands Manager for the Whitefish River First Nation Council. She served as the native spokesperson for the Algoma-Manitoulin Nuclear Awareness Group. Ms. Jacko is also a member of the North Channel Preservation Society, which is endeavouring to preserve the historical and environmental integrity of Nehahupkung, also known as Casson's Peak, in Baie Fine. She is currently a member of the Canadian Environmental Assessment Research Council.

Jim Kingham is a full-time Vice-Chair who has been involved in environmental work for 25 years as a scientist, negotiator and manager. He developed the Canadian Ocean Dumping Control Bill, negotiated certain marine environmental protection and technology issues associated with the Law of the Sea and chaired a standing Working Group of the U.N. Maritime Organization. He also developed a federal Environmental Emergency Prevention Program and strategic plans for the clean up of the Great Lakes and for the work of the Environmental Protection Service. Before joining the Board in 1987, Dr. Kingham was the Regional Director-General for the Ontario Region of Environment Canada and was the Canadian Chairman of the IJC Water Quality Board.

Anne Koven is a full-time Vice-Chair from Toronto. Appointed to the Board in April, 1987, Ms. Koven holds a Masters' degree in Public Administration from Queen's University. She was Research Director of the Upper Ottawa Landfill Site Study, commissioned by the Ontario Ministry of Health, from 1981 to 1986. She has worked in the mining industry and with the Ontario Advisory Council on Occupational Health and Safety.

Alan D. Levy is a full-time Vice-Chair from Toronto, appointed to the Board in May, 1990. He holds a B.A. and an LL.B. from the University of Toronto. For 18 years he practised law in the area of litigation, appearing before both courts and tribunals. Mr. Levy was one of the founders of the Canadian Environmental Law Association, and remained a member of its board of directors for 20 years until his appointment. In April 1991, he was cross-appointed as a member of the Ontario Environmental Appeal Board.

Elie W. Martel is a full-time Vice-Chair from Capreol. Mr. Martel was a teacher and elementary school principal prior to 1967 when he was elected to the Legislative Assembly. Mr. Martel served as the NDP member for Sudbury East until 1987 and was House Leader for his party from 1978 to October 1985. As a member he did extensive work on environmental issues. Mr. Martel is the author of two major reports on health and safety in the workplace. He was appointed to the Board in March, 1988.

John McClellan is a part-time member from Brantford. He is a geographer and has been involved in land use matters for 30 years. From 1974 to 1988 he was Executive Director of the Prince Edward Island Land Use Commission. Since 1989 he has been a Hearing Officer under the Niagara Escarpment Planning and Development Act. He was cross-appointed to the Board on January 1, 1991.

Mary G. Munro is full-time Executive Vice-Chair of the Board from Burlington. She is a Registered Nurse by profession and has been active in community and environmental affairs for many years, having served on various boards and commissions. Mrs. Munro has been City Alderman, Regional Councillor and Mayor of the City of Burlington. She was appointed to the Board on September 1, 1981.

Linda Pugsley joined the Board as a part time member in July 1992. With a background in nursing and citizen participation, Linda Pugsley also served as Alderman on Burlington City Council from 1978 to 1992. While on Burlington City Council, she concentrated on such areas as planning and development, strategic planning, environmental management and administration and finance. She also served on the Municipal Advisory Committee of the Niagara Escarpment Commission, Five Year Review.

Jim Robb is a full-time Vice-Chair with the Environmental Assessment Board and he is also cross-appointed to the Ontario Environmental Appeal Board. He holds Bachelor of Science and Forestry degrees and a Commercial Pilot Licence. Prior to joining the Board in September 1990, Mr. Robb owned and operated an urban tree care business. As the past Chairman of Save the Rouge Valley System, he worked on watershed conservation issues. Mr. Robb has written for various publications and his photographic credits include the cover of the Crombie Royal Commission Report, *Watershed*.

Alan William Roy is a part-time member from Brighton. A science graduate from Sir George Williams University, Montreal and Queen's University, Kingston, Mr. Roy has lengthy scientific experience in the area of fisheries protection. He is currently environmental director for the Union of Ontario Indians and was appointed to the Board in April, 1987.

The Hon. Mr. Justice Edward Saunders was appointed to the Board in May, 1990 to chair the Hydro Demand/Supply Plan hearing. He is a member of the Ontario Court of Justice (formerly the Supreme Court of Ontario) and has now served on the court for fourteen years. Prior to becoming a judge, he practised law in Toronto. He is a graduate of the University of Toronto and Osgoode Hall.

Elaine B. Tracey is a part-time member from Eganville, appointed to the Board in October, 1987. She was active in community environmental concerns and was the head of a committee to clean up the riverfront. She is a volunteer director of the Valley Savings Credit Union (Renfrew County), past president of the Eganville and District Business Association and recipient of the Business Person of the Year Award. Mrs. Tracey works part-time in the family owned and operated newspaper business.

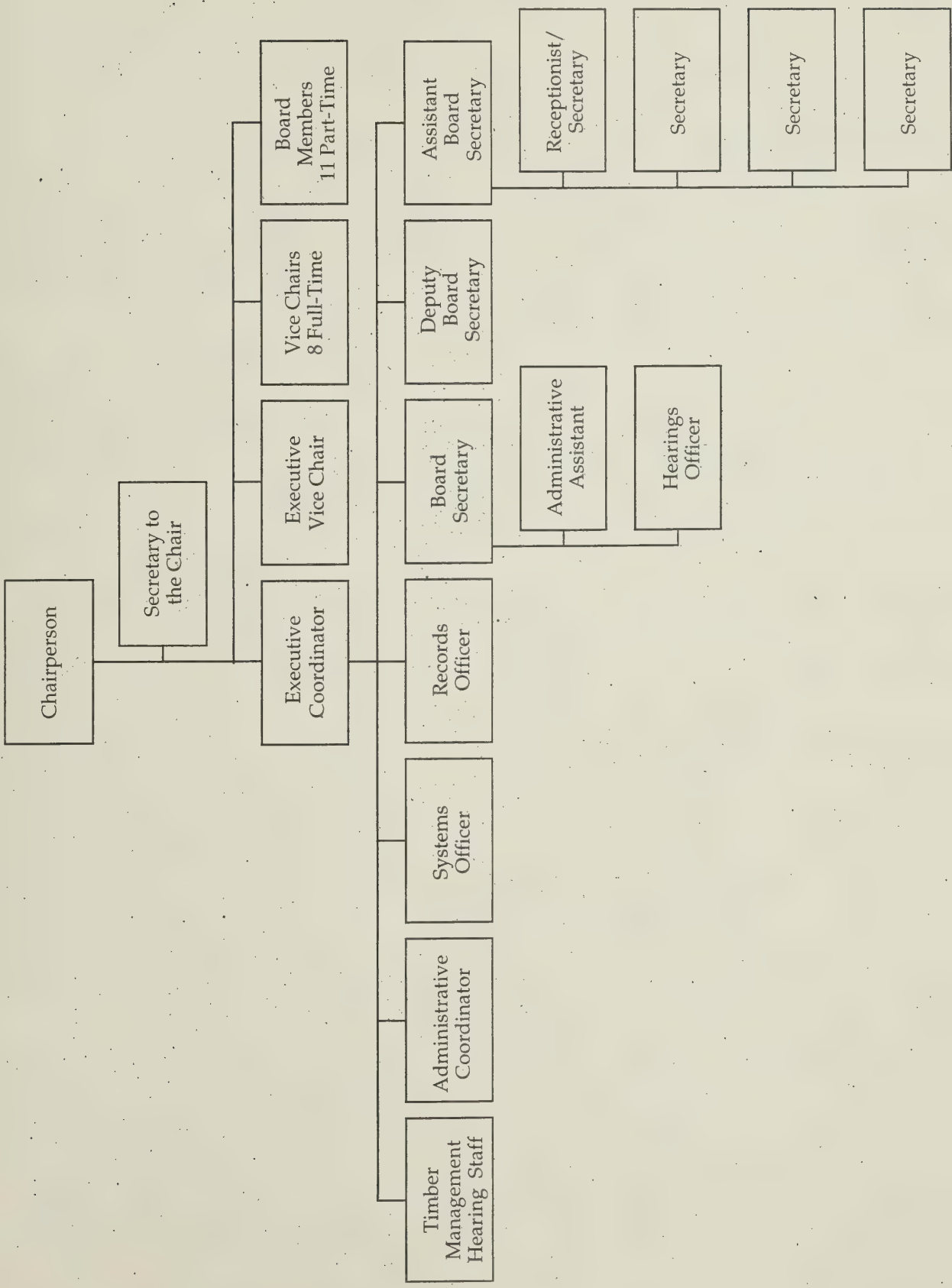
Administrative Services

The Board has undertaken some changes in the structure of its administrative staff complement, in order to provide better assistance to Board members, and to facilitate communications with the public, intervenors, and other government agencies.

An Executive Co-ordinator, Gail Morrison, has overall responsibility for Board staff. Jim Curren, Board Secretary, and Laura Reilly, Deputy Board Secretary, manage the administrative side of the hearings process. Other staff assist with both pre-hearing documentation and organization, and the production of decisions, and may attend at hearings where large numbers of citizens are attending and need information and assistance.

The office administration has also been streamlined, with Janet Martell supervising the support staff, and providing administrative oversight of the Board's financial transactions. Intervenor funding distribution is now handled by the Financial and Capital Management Branch of the Ministry, but the administrative assessment of applications, vetting of work plans, and provision of summary award data is carried out by Board staff under the direction of the Funding Panel.

The following chart shows the present organization of Board staff:



The Board's Jurisdiction

This table presents the four basic features of each Act under which the Board conducts hearings

ACT and its Purpose	Jurisdiction Features			
	Initiative for Hearing	Hearing Subjects	Board Authority	Appeals, and Other
Environmental Assessment "protection, conservation, wise management"	<ul style="list-style-type: none"> Minister of the Environment, responding to proponent, or interested person; or where the Minister considers it advisable (Sections 12 & 13)* 	<ul style="list-style-type: none"> "Undertaking" - proposal, plan or program Public sector, unless exempted by the Minister; Private sector, if designated, by the Minister 	<ul style="list-style-type: none"> Accept or Amend EAs. Approve, approve with "terms and conditions", or reject Decisions final, unless altered by Cabinet May award costs Board determines its own practice & procedure (Section 18(13)) 	<ul style="list-style-type: none"> Within 28 days, to the Minister; and decision subject to Cabinet approval (Section 23) Judicial Review
Environmental Protection "the protection and conservation of the natural environment"	<ul style="list-style-type: none"> Director of Approvals - MOE, either mandatory, or discretionary (Sections 30, 32, 36) Individual requests arising from contaminant damage to vegetation or livestock (Section 172) 	<ul style="list-style-type: none"> Mandatory, for waste disposal site capable of serving 1,500+ persons Discretionary, for other sites or waste management systems, & affecting by-laws Contamination (S.172) 	<ul style="list-style-type: none"> Board's decision implemented by the Director unless appealed (Section 33(4), 34) May award costs Assess injury/damage & negotiate claim settlement (Section 172) 	<ul style="list-style-type: none"> Party may appeal - on a question of law, to Divisional Court - on other issues, to Cabinet (within 30 days) (Section 35) Cabinet may confirm, alter or revoke Judicial Review
Ontario Water Resources enabling Minister of Environment to develop and regulate water & sewage services	<ul style="list-style-type: none"> Director of Approvals - MOE, mandatory, or discretionary (Sections 7(1), 54(1), 55(1), 74(4)) 	<ul style="list-style-type: none"> Mandatory, for sewage works in or into a municipality not itself the applicant, & applications re: areas of public water & sewage service Discretionary, for sewage works within applicant's own municipality 	<ul style="list-style-type: none"> Board gives public notice; if no objections, hearing not required (Section 8.2) Decision implemented by Director (Section 7(4)); May award costs 	<ul style="list-style-type: none"> Same appeal rights as the EPA, above
Consolidated Hearings for undertakings requiring hearings before more than one board	<ul style="list-style-type: none"> Proponent through notice to Hearings Registrar on own initiative (Sections 3 & 4) 	<ul style="list-style-type: none"> Undertakings, under 12 Acts in the Schedule of CHA; including Acts above, and <i>Planning Act</i> and <i>Niagara Escarpment Planning & Development Act</i> 	<ul style="list-style-type: none"> Joint Board's decision in effect, unless appealed to Cabinet Board determines its own practice & procedure (S.7.4) May award costs 	<ul style="list-style-type: none"> Within 28 days to Cabinet Otherwise, Cabinet may "confirm, vary or rescind" (Section 13) Judicial Review
Intervenor Funding Project "a pilot project" for intervenor funding for boards' proceedings	<ul style="list-style-type: none"> Parties with intervenor status, for hearings before EAB, Ont. Energy Board, or a Joint Board, by application to board (Section 3) 	<ul style="list-style-type: none"> Submissions for funding on issues affecting (i) a significant segment of public, and (ii) the public interest, not just private interests 	<ul style="list-style-type: none"> Determine the funding proponent Refuse or grant awards Supervise & enforce "conditions of an award" 	<ul style="list-style-type: none"> Appeal on "a matter of law", to the Ontario Court (General Division) (Section 13) Judicial Review
Public Inquiries to provide a forum for public issues, not covered by other Acts	<ul style="list-style-type: none"> By Order-in-Council 	<ul style="list-style-type: none"> Issues affecting the good government of Ontario, i.e. environmental for EAB 	<ul style="list-style-type: none"> Summon witnesses and documentary evidence, appoint investigators, etc. Board issues report 	<ul style="list-style-type: none"> No appeal for a report

* All section numbers refer to the relevant legislation in the Revised Statutes of Ontario, 1990.

A Strategic Plan for the Board

This year the Board undertook a strategic planning exercise to set a course for its work which could take account of the increasingly complex and long hearings before us, public demands for a clearer and speedier process and everyone's concern that scarce resources should be used most efficiently.

Most Board Members and several of our administrative staff participated in the development of the plan. The result was a Strategic Plan that sets out our purpose, roles and goals, establishes strategies for achieving those goals while taking account of the pressures we expect to face over the coming decade, and details an action plan to implement the specific measures that will be required on a year-by-year basis to achieve our goals.

We agreed that the Board exists to make good decisions for the protection, conservation and wise management of the Ontario environment using both the traditional hearing processes and new, creative techniques wherever such techniques offer the possibility of improving the overall decision-making process in favour of the people and environment of the province.

In workshop sessions Board Members and staff developed planning assumptions that assisted in arriving at strategies which were felt to have a reasonable chance of being implemented in the face of the limitations suggested by those assumptions. The general strategies arrived at fall under seven headings:

1. Improve the quality of Board decisions by ensuring that Members are well-trained, have access to appropriate information, have the essential resources to prepare such decisions and have a mechanism to appreciate feedback with respect to previous decisions of the Board.
2. Improve the traditional hearing process by developing better issue-narrowing techniques, better case management of individual hearings, better training of Members with respect to conduct of hearings and better preparatory work before a hearing begins.
3. Develop alternative dispute resolution processes, where appropriate, based on a study of experience in other jurisdictions and the applicability of such experience to our circumstances.
4. Enhance what is referred to as the "Board Member's Ethic," in which an appreciation of the environment to be protected, the public interest and a code of conduct for Board Members are melded together in internal discussions between Members, and supplemented by appropriate external information important to our work.
5. Enhance Board and hearing administration through appropriate staffing and training measures and changes to existing Board procedures where necessary.
6. Improve training of existing and new Board Members with respect to legislation, procedural matters, alternative dispute resolution, policies, precedents and information management, among other things.
7. Enhance communications within the Board, and between the Board and the various groups with which it ought to interact; the public, government, parties, various ministries, lawyers and so on.

Alternate Dispute Resolution

The Board continues to expand its commitment to using and learning more about alternate dispute resolution (ADR) approaches.

Board members have facilitated a number of pre-hearing settlement meetings designed for scoping, and wherever possible, resolving issues. Pre-settlement meetings have been useful in the Storrington, Guelph and Green Lane Landfill applications.

Asked whether they would prefer a hearing or an alternative approach to the distribution of participant funding, all parties to the Niagara Road #12 landfill application chose to negotiate the distribution of funding. At a public meeting facilitated by a Board member, the rules of the negotiation were agreed upon. The parties then met and worked out an agreement which was reviewed at a second public meeting with the Board member acting as mediator.

In these cases, the decision about how the funding was to be distributed was not arrived at through hearing, but the decision of the Board was a confirmation of the agreement worked out by the parties.

ADR was also used in the last round of intervenor funding requests for the Timber Management Class EA. The parties agreed to work with two Board members to determine an equitable distribution of a limited amount of funding. After two rounds of one-on-one meetings and the resulting cutting of requests, the parties asked the Board members to make a decision that would bring all the requests into line with the amount of money available. The

combination of approaches used during the Timber Management funding process allowed for a decision to be reached the same day, without the need for a hearing. And, before they left the meeting, all parties knew how much they would receive.

With a Board member acting as an advisor, a group of University of Toronto students prepared a report titled *The Use of Alternate Dispute Resolution (ADR) in Environmental Assessment Processes with Recommendations for Applying ADR to Environmental Assessment Board practice*. This report has been widely distributed. A Board member is following up on the report, researching how other tribunals in Ontario and across Canada use ADR to complement their formal hearing process. The research is focusing on the role Board members play in these ADR processes.

The Board's commitment to ADR was confirmed in its recently-completed strategic plan, which identifies a need for additional ADR training.

In its Mission Statement, the Board says that in making good decisions, it will use creative mechanisms (less formal approaches) at any point in the environmental assessment process where the Board is involved.

Niagara Escarpment Plan Review Hearings

The *Niagara Escarpment Planning and Development Act (NEPDA)* calls for a review of the *Niagara Escarpment Plan (NEP)* within five years of the Plan becoming effective on June 10, 1985. Subsequent reviews are required at intervals not greater than five years.

Accordingly, on June 10, 1990, the Minister of the Environment requested the Niagara Escarpment Commission (NEC), the body entrusted with the administration of the Plan, to undertake the first review. The Review commenced in August 1990 and was completed later that year.

The NEPDA provides for notice of the Review and for consultation with the public, affected municipalities and provincial ministries, to be followed by a public hearing.

In the summer of 1991, two members of the Environmental Assessment Board, Mary G. Munro and John McClellan (who is also a member of the Niagara Escarpment Hearing Office) were appointed by the NEC as hearing officers. Their task was to conduct a hearing on the Review and to submit a report of findings and recommendations to the NEC and the Minister.

The hearing began on August 12, 1991, in Burlington, moved to Owen Sound and later to Lowville. The hearing of evidence was completed in March 1992, with final submissions made in writing by the end of April, 1992.

183 witnesses were heard over 86 hearing days and 7 evening sessions. Some 44 of the witnesses appeared on their own behalf, with the remainder appearing on behalf of other interests.

Following careful review and consideration of the evidence heard and the submissions received, the Report of the hearing officers was completed and submitted to the NEC and the Minister on March 24, 1993,

The hearing officers found that the NEP has proven its value as the cornerstone for protection of a "unique heritage". The two core designations under the NEP, Escarpment Natural Area and Escarpment Protection Area effectively preserve a continuous green band from Queenston to Tobermory.

The evidence revealed that the NEP's provisions are now broadly accepted. Although a few participants wanted to roll back the NEP's restrictions, the majority believed that the Plan should not be diluted.

The Report recommends that the Minister of the Environment and Energy set a deadline for municipal Official Plans to be brought into conformity with the NEP, as the Act requires. The hearing officers found that the central purpose of the NEP, to protect the escarpment environment, can best be fulfilled by ensuring, throughout the jurisdictions covered by the plan, that municipal Official Plans do not contain provisions conflicting with the NEP. The hearing officers recommended that Official Plan conformity be given top priority and be expedited in order to reduce confusion, duplication, costs, and ad hoc decision making.

When Official Plans have been brought into conformity with the NEP, the report recommends that the implementation of the Plan be delegated to the seven upper-tier regions or counties in the Plan area. The report

recommends that the provincial government provide the necessary resources to the municipalities for the transition, and that the delegation occur upon the application of these municipalities.

The Report suggests a revised role for the NEC in monitoring, research, and education, tasks not now being performed by other levels of government. The hearing officers recommended the immediate development and implementation of a monitoring plan to evaluate the effectiveness of the NEP in preserving the escarpment environment.

The hearing officers found that the Niagara Escarpment Parks System is vital to the overall success of the NEP. They recommended that a co-ordinating council be established to administer the Parks System. The council would represent and ensure co-operation between the municipalities, conservation authorities, the Bruce Trail Association and other agencies whose lands make up the Parks System.

The greatest unresolved concern of the hearing officers was the impact of development on the quality and quantity of water resources. The Report recommends that rural plans of subdivision be allowed only by Plan amendment. It is also recommended that a study be conducted of the effects of water taking, water diversion and quarrying on the environment.

The Report does not adopt any of the NEC's proposals to add restrictions on certain uses within the Plan area. The hearing officers propose that changes to the Plan should be implemented only where the evidence shows that such changes are necessary to preserve the escarpment area. Where Commission witnesses were able to provide sufficient evidence that more restraints were desirable, the hearing officers recommended those changes.

The hearing revealed some dissatisfaction with the Review process adopted by the NEC. In particular, the haste with which the Review was conducted left some citizens and municipalities with the impression that their concerns had not been heard. In addition, the effects of many of the proposed changes had not been clearly identified to the interested public.

There was also concern that the number of major policy changes recommended by the NEC made it difficult for the hearing to examine each proposal in sufficient detail. It was suggested that these proposals might better have been presented as individual Plan amendments.

It became apparent during the hearing that relations between the NEC, landowners, local residents and businesses in the Plan area could be improved and that the Review process could provide an ideal opportunity to build consensus among stakeholders.

In order to address concerns about the review process, the hearing officers recommended that future five year reviews be conducted by an independent review team.

Niagara Escarpment Hearing Office

Of the 894 applications considered by the Niagara Escarpment Commission during the 1992-1993 fiscal year, 103 were appealed. Of these, three went to a Consolidated Hearing, 27 appeals/applications were withdrawn, one file was closed and three were adjourned indefinitely. Hearings were held on the remaining 69 appeals. Decisions by the Minister have been made on 66 applications with three decisions still outstanding. Of the decisions made, the Minister has concurred with the recommendations of the hearing officers on all but two applications. In addition, three Plan Amendment hearings were held.

Progress Report:

and refuse the application; but each proposed its own set of terms and conditions of approval, some of which would require major changes in forestry practice in Ontario.

The panel continues to prepare its decision, which is expected late in 1993.

Timber Management Class EA Hearing

Final Argument concluded on November 12, 1992, for the Board's hearing of the Ministry of Natural Resources Class Environmental Assessment for Timber Management on Crown Lands in Ontario. The major parties had requested jointly a postponement of Final Argument, but the Board insisted on keeping a schedule that had been set long before. The Board received about 2,500 pages of written argument from the parties and heard oral argument for 15 days in Sudbury. Because most of the parties were late in filing written argument, this delayed the Board's deliberations.

In addition to the proponent, parties presenting oral argument were the Ontario Forest Industries Association, Forests For Tomorrow, the Nishnawbe-Aski Nation/Windigo Tribal Council, Grand Council Treaty #3, a coalition of the Ontario Federation of Anglers and Hunters with the Northern Ontario Tourist Outfitters Association, the Ontario Professional Foresters Association, the Canadian Association of Single Industry Towns, the Northwatch coalition and the Ministry of Environment and Energy.

The Ministry of Natural Resources is seeking a nine-year approval for timber management activities over a vast area of Northern Ontario. It proposed a planning process to regulate the activities of road-building, timber harvest, regeneration and tending. No intervenor took the position that the Board reject the Environmental Assessment

The Timber Management Hearing opened in May 1988. In all, the hearing sat for 411 days, listened to more than 500 witnesses, recorded 70,000 pages of written transcript and received more than 2,300 exhibits. Most of the hearing was conducted in Northern Ontario communities, where the effects of the decision will be felt most directly.

Progress Report:

Ontario Waste Management Corporation Hearing

The Ontario Waste Management Corporation (OWMC) has applied for permission to construct and operate a large, multi-faceted hazardous waste treatment and disposal facility in Smithville, in the Township of West Lincoln (Regional Municipality of Niagara). The facility would receive wastes from across the province. The application is also for approval of a planning process for hazardous waste collection and for transfer stations throughout the province, should such stations be necessary. The issues in the hearing are complex and controversial, relating to aspects of hazardous waste disposal throughout the province, and a range of complex technologies.

The matter is being heard by a Joint Board under the *Consolidated Hearings Act, 1981*. The original Joint Board consisted of one member from the Ontario Municipal Board (OMB) and two from the Environmental Assessment Board. The OMB member was appointed to the bench in 1992 and the two EAB members are now constituted as the Joint Board.

The hearing of evidence began in 1990, and after 266 hearing days, nearly 1,500 exhibits and almost 60,000 pages of transcribed evidence, the Board is ready to hear oral argument and then to render its decision.

Index of Decisions

Environmental Assessment Act

EA-91-01

APPLICANT: Laidlaw Waste Systems Inc.
Storrington Landfill Site

The applicant sought approval for a 980,000 tonne expansion of a landfill site in the Township of Storrington.

ISSUE: The Board's decision-making function under the *Environmental Assessment Act* (*EA Act*) encompasses two distinct determinations. The Board must first determine if the proponent's Environmental Assessment (EA) satisfies the rational planning framework of ss. 5(3) of the *EA Act* and therefore forms an "acceptable" basis for good decision making. If the Board finds the EA acceptable, then it must determine whether the undertaking should be granted approval, and if so, the terms and conditions of the approval.

Pursuant to section 36 of the *EP Act*, the Board was also asked to determine whether Storrington By-law 1978-15, (as amended) should apply to the proposed landfill extension. This by-law specifies: "No landfill site shall be located within 800 metres of any waterbody, residential or commercial zone boundary or any existing dwelling".

DECISION: The Board found that the proponent's EA complied with the minimum planning requirements of ss. 5(3) of the *EA Act*. Although the Board accepted the EA, it concluded that the EA did not completely satisfy the emerging expectations of the public, the EA Branch or the Board.

The Board decision to "accept" EA noted the following: the conclusions of the Government Review; the proponent's preparation and submission of an *EP Act* application prior to the *EA Act* designation; the private proponent's expectation that the *EP Act* application would service ongoing waste disposal contracts with the City and Township of Kingston; the guidance that was available from the agencies of the Ontario Government (eg. MOE, MNR) and Board decisions during the preparation of the EA; the acquiescence of the EA Branch to a stringent time constraint placed on the EA process; the factoring of the provincial waste reduction and diversion targets into the calculation of the need for disposal capacity; the Board's determinations on duration and quantity and that need was adequately established; the potential environmental, social and economic consequences of rejecting the EA; and the Board's ability to carefully examine the preferred alternative before determining if the undertaking should be approved.

The Board determined that the potential environmental impacts of the Storrington Landfill extension could be prevented, mitigated or remedied to provide for the protection, conservation and wise management of the environment. However, the approval could only be granted subject to thorough Conditions of Approval, such as:

- closure of the site by December 31, 2000;
- capacity limited to 600,000 tonnes of solid non-hazardous waste;
- formation of a Public Liaison Committee with strong representation of nearby residents;
- significant funding for the Public Liaison Committee to avoid off-site impacts through independent compliance monitoring, timely response to complaints and waste reduction and diversion initiatives;
- extensive and innovative measures for containing, collecting and decontaminating leachate and runoff to protect surface and subsurface waters;
- collection and combustion of landfill gases to effectively eliminate noxious gases and odours from the existing site and the proposed extension;
- ongoing monitoring of surface water, subsurface water, air quality, noise and ecosystem health in the vicinity of the site;
- a requirement for the protection of local property values and thorough mitigation of residual nuisance impacts (eg. noise, dust, visual);
- a plan to assure the provision of domestic water in the unlikely eventuality that a local domestic well becomes contaminated with Landfill leachate; and
- a requirement that adequate funds are set aside for the long term operation and maintenance of the necessary pollution prevention and abatement facilities over the contaminating lifespan of the site.

The Board accepted that set-backs can be a valuable planning tool for reducing potential conflicts between different land-uses. However, the Board concluded that the decision regarding the by-law was subsidiary to the proposal's compliance with the purpose and provisions of the *EA Act*. Therefore, in light of the Board's determinations pursuant to the *EA Act*, the Board concluded that Storrington By-law 1978-15 (as amended) should not apply to the Storrington Landfill extension.

RELEASE DATE: March 31, 1993

EA-90-01

APPLICANT: Ontario Hydro
Demand/Supply Plan (DSP) Hearings

ISSUE: Application for approval of an EA based on Ontario Hydro's 25-year demand and supply plan *Providing the Balance of Power*.

The hearing of evidence began on April 22, 1991. Eleven of the proponent's subject Panels were completed, covering Ontario Hydro's load forecasting, existing system, cost concepts and avoided costs, demand management, non-utility generation, hydraulic system, purchase options, fossil generation, nuclear generation, major supply options, and Demand Supply Plans.

In the fall of 1992, the intervenor Northwatch brought a motion to terminate the Hearings on the grounds that drastic changes in circumstances precluded approval of the original plan. On January 25, 1993, before the motion could be heard, the proponent withdrew its application for approval of the undertaking and the Hearings were terminated.

On January 25, 1993, the Minister of the Environment and Energy asked that the members of the DSP Hearings Panel form an advisory committee on Ontario Hydro planning issues. After several scoping meetings held to consult with the parties, however, the Panel members decided not to proceed as an advisory committee.

The Panel invited the parties to make submissions on costs, and its decision on the general principles of a costs award for these Hearings will be applied in assessing the specific costs applications.

Environmental Protection Act

EP-92-01

APPLICANT: Town of Fort Erie

The proponent sought approval to continue the use of a landfill for the disposal of domestic, commercial and non-hazardous solid industrial wastes for a five year interim period without increasing the approved height or capacity.

ISSUE: The Board heard evidence relating to three issues identified by the parties and confirmed in procedural directions issued by the Board: 1. Environmental viability of the site; 2. Need to ensure the fill does not exceed approved capacity and height; and 3. Status of the Waste Management Master Plan of the Town of Fort Erie and neighbouring communities.

DECISION: An extension for 5 years was granted, subject to conditions of approval governing site limits, service area, site operations, monitoring of impacts on ground and surface water, contingency plans for the collection and treatment of contaminated discharges in bedrock or surface waters, annual reporting, and the role of a public liaison committee.

The required capacity and height limits are defined by a final contour plan that enforces the site limits required by the previous EA exemption order.

The decision noted the need for a comprehensive program of waste diversion initiatives, and the expeditious preparation of a Waste Management Master Plan within five years.

RELEASE DATE: January 14, 1993

Consolidated Hearings Act

CH-91-03

APPLICANT: Reclamation Systems Inc. (RSI)

RSI sought approval to operate a solid waste disposal site in the Acton Quarry.

ISSUE: At the preliminary hearing, the Board heard motions to dismiss the proponent's applications on the grounds that they were incomplete and inadequate and failed to trigger the Board's jurisdiction under the *Consolidated Hearings Act* (CH Act)

DECISION: The Board found that RSI failed to file certain required applications and requests for approval and, in other cases, filed only nominal applications. As the proponent did not file adequate material to warrant commencement of a hearing under at least two of the Acts set out in the CH Act, the Board found that it did not have jurisdiction to hold a hearing on the proposed undertaking.¹

RELEASE DATE: September 16, 1992

1. The question of the Board's jurisdiction to hold a hearing under the CH Act was clarified by the Divisional Court's opinion on the stated case in *Re Joint Board and Ontario Hydro et al.* (March 8, 1993) Doc. No. 787/92 (Ont. Div. Ct.)

CH-91-13

APPLICANT: Ministry of the Environment (MOE)
Lambton-North Kent Area Water Works

MOE sought two Orders necessary to conclude the Master Agreement to establish and operate a new water works system supplying the Townships of Sombra, Chatham and Camden, and the Towns of Wallaceburg and Dresden. The cost of the system would be shared by the province and the five municipalities.

The first Order would amend an existing Lambton Area Works Order to permit the sale of water to the new system. The second Order would approve the application to the Ontario Municipal Board for Capital Expenditure to allow the participating municipalities to enter into the Master Agreement.

ISSUE: At issue was the necessity of the proposed undertaking and the impairment of the debt capacities of the five municipalities.

DECISION: The Board found that the health and safety concerns posed to the Town of Wallaceburg by the existing system, together with an urgent need to supply the Town of Dresden with a secure water supply, outweighed the impairment of the debt capacity of the five municipalities.

The Board granted the Orders sought by MOE.

RELEASE DATE: March 31, 1993

CH-91-06

APPLICANT: Steven Assaff

Concerning three matters: an appeal by the Niagara Escarpment Commission (NEC) from a decision of the Committee of Adjustment of the Town of Collingwood granting, with conditions, an application by Mr. Assaff to sever land; by Mr. Assaff from a decision by the NEC refusing an application for a development permit to construct a single family dwelling on the severed land; and a referral from the Minister of Municipal Affairs for consideration of proposed Amendment #84 to the Beaverton Official Plan.

ISSUE: At issue was whether the severed lot would comply with the Official Plan and NEC Plan policies related to access and frontage.

DECISION: The consent to sever was not allowed. The Board found that the roadway serving the severed lot did not comply with reasonable requirements of proper access and frontage in the Official Plan or NEC Plan. There was no need to approve the Official Plan amendment nor to address the matter of the development permit application.

RELEASE DATE: November 10, 1992

CH-91-10

APPLICANT: Wilfred Holyoake

ISSUE: A Niagara Escarpment area landowner sought severance of a lot, which already had two previously conveyed parcels of land severed from it. The applicant sought the severance on the basis that he was a retiring farmer.

DECISION: The *Niagara Escarpment Plan* provides a quota of one severance per township lot. A retiring farmer lot is not available if the quota has been exceeded, as in this case.

In any event, the applicant had clearly retired from farming for health reasons some ten years before acquiring the parcel of land. The decision as to whether a person is a *bona fide retiring farmer* is one to be made on the facts of each case. Compassionate grounds cannot make a retiring farmer out of a person who has not farmed in 17 years. Therefore, the applicant did not meet the test of being a bona fide retiring farmer and his application for a development permit was denied.

RELEASE DATE: April 8, 1992

CH-91-15

APPLICANT: Mr. and Mrs. Harold Sutherland

Concerning two appeals: by the Niagara Escarpment Commission (NEC) from a decision of the Grey County Planning Approvals Committee granting an application by Mr. Sutherland to sever land; by Mr. Sutherland from a decision by the NEC refusing an application for a development permit.

The Sutherlands intended to sell the severed land to a couple who had leased the land and the cottage upon it since 1972. The prospective purchasers had no intention of developing the lot.

ISSUE: The Board asked why a permit would be required in the circumstances and found that the NEC's real concern was density and access.

DECISION: The Board found that no development permit was required and dismissed the NEC's appeal. As the cottage on site had existed for twenty years there would be no impact of severance on density or access and the requirement of a development permit was "administratively gratuitous".

RELEASE DATE: September 8, 1992

Intervenor Funding Project Act

EA-91-01(FAS)

PROPONENT: Laidlaw Waste Systems Inc.
Storrington Township Landfill Site

Residents' group Storrington Committee Against Trash (SCAT) applied for supplementary funding under the *Intervenor Funding Project Act* for hydrogeological work and to help identify constructive alternatives.

ISSUE: The initial intervenor funding decision had awarded \$27,500 for a single hydrogeological review on behalf of SCAT and the Township of Storrington, of which the Township was to pay 50 per cent. The Township subsequently negotiated an agreement with the proponent for the funding of independent hydrogeological review. The effect was that the Township paid only a quarter of the cost of the review contemplated by the original Panel.

DECISION: The arrangement negotiated between the Township and the proponent, subsequent to the funding Panel's decision, should not be allowed to frustrate the intent of the Panel's decision. SCAT was awarded an additional \$6,875 to pay for hydrogeological work.

Supplementary funding of \$5,000 was awarded to SCAT for the presentation of constructive alternatives to the undertaking and alternative methods of carrying out the undertaking. The Panel found that the evidence would contribute substantially to its understanding of issues related to the public interest.

RELEASE DATE: July 24, 1992

EA-91-01(FAS)

PROPONENT: Laidlaw Waste Systems Inc.
Storrington Township Landfill Site

Residents' group Storrington Committee Against Trash (SCAT) and the proponent asked the Panel to ratify a supplementary funding agreement negotiated between the two parties.

ISSUE: At issue was the eligibility for funding and funding award to SCAT.

DECISION: The Panel made an Intervenor Funding award of up to \$10,000.00 for hydrogeology and up to \$52,143.37 for legal fees and disbursements, subject to a 2 per cent contribution from SCAT.

RELEASE DATE: October 29, 1992

CH-91-09(F)

PROPONENT: City of Niagara Falls
Mountain Road Landfill Site

Residents' group Niagara Ratepayers for a Healthy Environment (NRHE) applied for funding under the *Intervenor Funding Project Act*.

ISSUES: At issue was the eligibility for funding and funding award to NRHE.

DECISION: The Panel found that NRHE met the requirements of section 7 of the *IFP Act*; accepted the amounts negotiated between the two parties; and made decisions on the amounts which were contested. Funding was awarded in the amount of \$155,120.80.

RELEASE DATE: December 29, 1992

EP-92-02(F)

PROPONENT: City of Guelph
Eastview Road Landfill Site

Residents' group Eastview Residents for Environmental Justice (EREJ) applied for funding under the *Intervenor Funding Project Act*.

ISSUES: The parties had agreed to divide the funding hearing into two phases, rather than debate and decide the entire funding application at the hearing of January 12, 1993. The first phase would fund a series of meetings designed to clarify understanding, narrow the issues, and resolve issues where possible.

The parties had agreed to intervenor funding for the first phase, in the amount of \$45,500.

DECISION: The Panel found the phasing of the funding hearing to be an efficient and accountable use of public funds. EREJ was awarded intervenor funding for the first Phase in the amount of \$47,810, being the agreed amount, partially adjusted for GST.

The Panel expressed concern about whether EREJ is representative of the public interest, rather than the private interest of the group's founder. It was decided to defer this issue to the second phase of the funding hearing.

RELEASE DATE: January 14, 1993

CH-91-08(F)

PROPONENT: Steetley Quarry Products Inc.
South Quarry Landfill Development

Parties requested funding under the *Intervenor Funding Project Act (IFP Act)* to participate in an *Environmental Assessment Act* hearing examining a private sector proposal to establish a landfill site at a mined-out quarry.

ISSUE: At issue was eligibility for funding and the funding award to intervenors.

- DECISION:**
1. Evidence of the proponent's potential profit from the undertaking was not allowed, as it was not a relevant consideration for a Funding Panel;
 2. The purpose of funding is not to establish a level playing field, but to ensure the adequate representation of interests necessary for a proper enquiry;
 3. Funding was not available for a period longer than the Hearing Panel had estimated;
 4. Funding of separate representation should not necessarily be granted simply because two intervenors have different perspectives on an issue. The onus is on the intervenor to satisfy the Panel that the board will be assisted by separate representation and that it will contribute substantially to the Hearing.
 5. The *IFP Act* does not authorize funding to help educate an intervenor about the relevant issues.
 6. In considering whether separate representation of intervenors is necessary, an examination of the nature of the case to be called by non-funded parties is required;
 7. The Panel considered whether the Region, the Town or the Conservation Authority ought to receive funding. A large public body or one involved

in hearings as a normal part of its regulatory activity should look to its own resources and not to intervenor funding. In the case of a small public body, the following factors will be relevant: exploration of other sources of funding, including borrowing; benefits to be derived by the public body from the undertaking; anticipated length of the hearing; whether it has established a broad-based coalition with other parties; whether its interests will be addressed by non-funded parties; whether its intervention is necessary; and whether it has allocated its resources properly.

8. The *IFP Act* was primarily intended to benefit residents' groups as they have limited resources. Where there is a choice between funding a body or an established and responsible residents' group, the residents' group ought to be given priority;
9. In general, review should be funded but not original field work. If in the conduct of the hearing, the review exposes significant "holes" which concern the Board, funding of original work can be ordered;
10. Private proponents are not to be treated differently than public proponents by Funding Panels;
11. The date of issue of the notice of hearing is the commencement date for fundable services;
12. A Panel will be more sympathetic to a questionable claim for funding where that claim is supported by the proponent;
13. The nature of the evidence to be called by Ministry of Environment and Energy and the Niagara Escarpment Commission was helpful to the Panel on the issue of duplication and on the overall perspective about the issues and parties;
14. Parties were not permitted to call their consultants during the hearing to defend their budgets. The potential for long and costly inquiries would undermine the funding process;
15. The Panel rejected as excessive a claim for 1000 hours of law clerk's assistance to the residents' group;
16. The Panel did not award funding for consultants to the residents' group, as it found that experts would be retained by the other parties. The Panel noted, however, that the extent to which the parties were willing to extend access to their consultants should be relevant to the costs awarded to those parties.

The residents' group was awarded \$155,147.71.

RELEASE DATE: March 25, 1993.

CH-87-02(FAS)

PROPONENT: Ontario Waste Management Corporation (OWMC)

Township of West Lincoln made three application for supplementary funding under the *Intervenor Funding Project Act*. A total of \$90,035.08 was requested to pay for consultants and legal services in negotiating an impact management agreement with OWMC. The proponent supported the Township's applications.

ISSUES: At issue was the Township's eligibility for supplementary funding and the amount to be awarded.

DECISION: In determining that the Township was eligible for supplementary funding, the Panel noted that this area of expenditure was not covered in earlier funding proceedings and that the Board had stated on the record that a draft impact management agreement, as part of draft conditions of approval, was desirable.

The Panel decided that the Township should bear 10 per cent of its costs. Supplementary funding was awarded on the following decision dates and in the following amounts:

October 14, 1992	\$30,699.63
January 7, 1993	\$42,627.94
March 12, 1993	<u>\$7,704.94</u>
	\$81,031.57

CH-87-02(FAS)

PROPONENT: Ontario Waste Management Corporation (OWMC)

The Ontario Toxic Waste Research Coalition, the Township of West Lincoln and the Regional Municipality of Niagara (the tri-parties) collectively made four applications for supplementary funding under the *Intervenor Funding Project Act*, to pay for the work of expert witnesses on unanticipated evidence concerning chloride management and on risk assessment.

ISSUES: At issue was the eligibility for funding and the funding award to the tri-parties.

DECISION: The Panel decided that the tri-parties should bear 10 per cent of their costs. Supplementary funding was awarded on the following decision dates and in the following amounts:

July 24, 1992	\$128,801.75
November 13, 1992	\$39,331.80
January 20, 1993	\$23,076.19
January 26, 1993	<u>\$14,637.74</u>
	\$205,847.48

EA-90-01(FAS)

PROPONENT: Ontario Hydro
Demand/Supply Hearings

Supplementary funding was requested under the *Intervenor Funding Project Act (IFP Act)* to support the participation of intervenors in an Environmental Assessment Board Hearing on Ontario Hydro's application for requirement and rationale approvals for electricity generation based on a 25 year plan.

ISSUE: At issue was the intervenors' eligibility for supplementary funding and funding allocation as a result of changed circumstances rendering their original awards inadequate.

DECISION: On October 27, 1992, the Panel issued a Supplementary Funding Direction that unanticipated changes in circumstances warranted an increase of 20 per cent in the award for legal fees.

Between April 20, 1992 and January 27, 1993, the Panel issued six supplementary funding decisions, awarding a total of \$1,100,159.60, plus applicable GST to thirteen intervenors.

INTERIM COSTS: The Panel is authorized to award costs by ss. 18 (16a) of the *Environmental Assessment Act*. Applications for interim costs were received from parties who had received funding under the *IFP Act* and from unfunded parties. Funded intervenors were limited to a "top-up" of legal fees, while unfunded parties were also able to claim expert fees and disbursements.

Between June 9, 1992 and January 27, 1993, the Panel issued six decisions on interim costs, awarding a total of \$2,474,815.74, inclusive of applicable GST to twenty-two parties.¹

1. Following the termination of the DSP Hearings in January, 1993, all outstanding funding and costs awards were deferred to the Costs Assessment.

Intervenor Funding Programs Pursuant to Orders in Council

EA-87-02(F) 1992-1993

PROPONENT: Timber Management Class EA Hearing
Intervenor Funding Program

By Order-in-Council 1851/92, a Funding Panel was authorized to distribute up to \$180,000 in additional intervenor funding in connection with the Timber Management Class EA Hearing.

The additional funding was limited by the Order-in-Council to parties which had applied for intervenor funding before the commencement of the hearing.

Four applications were received from eligible intervenors: Forests for Tomorrow (FFT), Grand Council Treaty #3 (GCT#3), Nishnawabe-Aski Nation (NAN), and the coalition of the Ontario Federation of Anglers and Hunters and the Northern Ontario Tourist Outfitters Association (OFAH/NOTO).

ISSUE: At issue was the amount to be awarded to each of the four intervenors.

DECISION: Funding was distributed to the intervenor groups as follows:

FFT	\$38,245
GCT#3	\$40,996
NAN	\$25,815
OFAH/NOT	\$74,996

RELEASE DATE: October 7, 1992

CH-87-03(F) 1992

PROPONENT: County of Simcoe
North Simcoe Landfill Site

WYE Citizens' Group applied for additional Intervenor Funding provided for by Order-in-Council 2670/92.

ISSUES: At issue was the WYE Citizens' Group's eligibility for funding and the distribution of the \$15,000 available.

DECISION: The Panel found that the WYE Citizens' Group met the eligibility conditions and criteria set out by the Order-in-Council, and was awarded the full amount of the funding. Due to the fundraising difficulties presented by a re-hearing, the WYE Citizens' Group was required to raise only \$1,000 as a precondition for receiving funds.

RELEASE DATE: December 15, 1992

OC-92-01(F)

PROPONENT: Grimsby, Pelham, Lincoln and West Lincoln Waste Management Committee
Niagara Road 12 Landfill Site

By Order-in-Council 3171/92, the Board was requested to appoint a Panel to determine the distribution of participant funding provided by the Grimsby, Pelham, Lincoln and West Lincoln Waste Management Committee.

The Panel acted as facilitator in an informal negotiation process. After two meetings, a negotiated agreement was reached between the Landfill Concerned Citizens' Group (LCCG) and the proponent. A second agreement was reached between Mary and Stanley Las and the proponent.

DECISION: The Panel confirmed the two agreements, under which LCCG was awarded funding to a maximum of \$124,043.38, and Mary and Stanley Las were awarded funding to a maximum of \$2,140.

RELEASE DATE: December 29, 1992

OC-91-01(FS)

PROPONENT: County of Essex and City of Windsor
Waste Management Master Plan Landfill Component

Residents' group Colchester in Action (CIA) applied for supplementary funding for legal and consultant fees.

ISSUES: The original Funding Panel had awarded funding for consultants to the Township of Colchester North but not to CIA, which was directed to share the Township's consultants. The Township subsequently reached an agreement with the proponent whereby it no longer opposed the siting of the landfill within its boundaries, subject to certain conditions. CIA continued to oppose the site.

DECISION:

The change in the position of the Township had left it in a position of clear conflict with the interests of CIA. CIA's request was reasonable in the circumstances and funding was awarded in the amount of \$69,498.612.

RELEASE DATE:

March 25, 1993

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ENVIRONMENTAL ASSESSMENT BOARD ANNUAL REPORT



Fiscal Year ended March 31, 1994

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Further information is available from:
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Tel: (416) 484-7800

Il existe une version française du présent document

Chair's Message

The challenges which the Board faces continue: the need to make hearings shorter and more efficient while maintaining fairness; the need to be innovative by adapting the hearing process and adopting new roles for resolving conflicts; and the need to use resources wisely.

In last year's report I noted that the Board had developed a strategic plan to guide its course over the next several years. The members agreed that the Board's most important purpose is to make good decisions for the protection, conservation, and wise management of the Ontario environment, using both the traditional hearing process and new, creative techniques.

Over the past year some of our initiatives for improvement have borne fruit. Several hearings which might have taken four or five weeks were completed within a week. Some issues, such as funding and costs, were settled without a hearing. We had anticipated assistance in our attempts to control the hearing process from proposed amendments to the *Statutory Powers Procedure Act*. The content and date of passage of those amendments is now uncertain and so, to the extent possible, we must continue to amend our process administratively.

Both improvements in the traditional hearing process and the development of new, creative techniques are being accomplished in small steps by individual Board members keeping this Strategic Plan objective in mind. Mediation and facilitation skills will continue to be improved through team mediation and feedback.

A changed role for the Board is being provided at the direction of the Minister or Cabinet in some specific situations described by Order in Council. We have administered the distribution of participant funding for the Interim Waste Authority hearings using facilitators (one in-house and one outsider) as well as a funding panel; and arranged to mediate and, if necessary, arbitrate property value protection issues outstanding after an environmental assessment had been accepted and the undertaking approved on condition that these separate processes would take place.

We anticipate external attempts at streamlining the Board's process such as stronger efforts by the Environmental Assessment Branch to settle matters before hearings become necessary and, if there are still outstanding issues, to limit the Board's adjudicative role to consideration of those issues only.

Internally, we recognize that the timeliness of decision production is an issue. Although the *Timber Management Class Environmental Assessment* decision was released in April, 1994 and the *Ontario Waste Management Corporation Hazardous Waste Facilities* decision will be released within the next several months, we know that there is some frustration in our client community about the length of time it takes to release decisions. This is not a problem with *Environmental Protection Act* decisions, nor with the majority of others. These are generally released within the Board's three month time-frame for release of decisions. However, hearings which incorporate the *Environmental Assessment Act's* requirements continue to pose problems.

For long hearings, we have adopted a six month decision release guideline which has not always proved capable of being met. The key, I believe, is shortening the hearings themselves. Meanwhile, two fairly lengthy hearings will be completed in mid-1994, the *Steetley South Quarry Landfill* and the *North Simcoe Landfill*. The panels in both will be making strenuous efforts to meet or better the six month deadline. The Board continues to explore opportunities for improving the decision-writing process and achieving an appropriate level of detail.

Another continuing issue is uncertainty about the Board's expectations of participants in the process. We have been trying to provide greater certainty through initiatives like the *Protocol for Consideration of Agreements Among Parties*. This two page document explains how the Board will deal with agreements. It is designed to give assurance that agreements will shorten the hearing part of the process, but it also requires that the basis for the agreements be explained in writing or orally, if the Board requests, so that the public interest is demonstrably met.

A Practice Direction is being developed to provide guidance on appropriate documentation to be submitted and reviewed by parties. The purpose of this Direction is to reduce duplication of documentation received by the Board and streamline the exchange of information among the parties. It is being developed with the help of the Board's Advisory Committee, a group established in September of 1993 to provide an outside, representative forum for discussion of problems and new initiatives. The work of the committee is discussed separately in this annual report.

Intervenor funding and costs continue to represent a large part of our workload. These matters do not involve long hearings, but members continue to grapple with the principles to be applied. A body of cases on funding is now available, and we have agreed with the Ontario Energy Board that a compilation of the principles established in these cases should be made available to participants in the process. We are also intending to make available a set of costs guidelines so that there will be more certainty about who can expect to receive costs, for what, and at what rates.

The Board is fortunate to have been able to work with students from the University of Toronto on a public communications project which resulted in a report entitled *Effective Public Participation in the Ontario Environmental Assessment Board's Hearing Process: Barriers and Recommendations for Improvement*. We are using this report as a basis for further revisions to what we now call our *Citizen's Guide* as well as the development of a communications plan.

In terms of the Board's workload, the recession has taken its toll. Last year we expected to have a major Ontario Hydro transmission line hearing and a private sector rotary kiln application, both under the *Environmental Assessment Act*, but both were withdrawn prior to the hearing of evidence. We will, however, be involved in other large and contentious hearings: three major hearings related to the Interim Waste Authority proposals for the Greater Toronto area are in the preparation stages, and will likely proceed to preliminary hearings this fall.

On the personnel front, this year we lost part-time members Alan Roy, Elaine Tracey, Esther Jacko, Dr. Paul Eagles, and Dr. George Connell, whose terms expired. Also, Mr. Justice Edward Saunders, who was seconded from the Supreme Court General Division to participate in the *Ontario Hydro Demand/Supply Plan* hearing, retired from the Board after the costs decisions related to that hearing were completed. Each one was a valuable member, and we will miss their individual and collective expertise and experience.

The Board staff members, under the excellent direction of Gail Morrison, continue to innovate and improve our internal and external processes. More detail on staff roles and additions is provided later in this report.

In closing, I would like to acknowledge all the participants in our difficult and often contentious process who try in good faith to make it work. Certainly this includes the members and staff of the Board who encounter hard decisions on a daily basis and exert extraordinary effort. But it also includes proponents, intervenors, government, and observers of this difficult but necessary process of environmental assessment. Together I am confident that we can better achieve the goal of conservation and wise management of the environment.

A handwritten signature in dark ink, appearing to read "Grace P." followed by a long horizontal flourish.

Grace Patterson

Members of the Board

Grace Patterson has been the Board Chair since February, 1990. She practised environmental law with the Canadian Environmental Law Association until her appointment to the Board as a Vice-Chair in 1986. She was a director of several environmental organizations and served on the Science Advisory Board of the International Joint Commission and on the Canadian Environmental Assessment Research Council. Ms. Patterson was also a special lecturer on environmental law at Queen's University Law School.

Kate Davies is a part-time member from Ottawa, appointed to the Board in July, 1990. She holds a doctorate in Biochemistry from Oxford University in England and prior to her appointment was Manager of the City of Toronto's Environmental Protection Office. She has also had appointments to the International Joint Commission's Science Advisory Board and the Canadian Environmental Assessment Research Council. She is currently the president of Ecosystems Consulting Inc.

Barbara Doherty is a full-time Vice-Chair from Toronto appointed to the Board in November, 1988. She graduated from the University of Western Ontario with a B.Sc. in 1977 and from Osgoode Hall Law School in 1980. She was called to the Bar in 1982. Ms. Doherty practised civil litigation in Toronto and appeared before a wide variety of courts and administrative tribunals until her appointment to the Board.

John Duncanson is a part-time member from Orangeville. Mr. Duncanson obtained a B.A. from the University of Toronto in 1947 and a Business Certificate in 1968. He was employed in various management appointments with Bell Telephone Company from 1947 to 1969, was the Director of the Department of Alumni Affairs at the University of Toronto from 1969 until 1974. He became a Hearing Officer under the Niagara Escarpment Planning and Development Act in 1975. He was cross-appointed to the Board on January 1, 1991.

Robert Edwards is a part-time member of the Board appointed to the Board in July, 1992. He obtained a B.A. from Glendon College of York University in 1972, and an LL.B. from the University of Toronto in 1977. He was called to the Bar of Ontario in 1979, and has practised law in Thunder Bay since then. The focus of his practice has been on administrative law, with particular emphasis on labour and employment law. He has acted as counsel for a number of groups concerned with environmental matters throughout Northwestern Ontario.

David Evans is a part time Board member from Toronto appointed in July 1992. He is an experienced environmental mediator, facilitator and trainer, and has spoken widely on issues related to public consultation and community affairs. From 1980 to 1985, David Evans operated a mediation and advocacy consultancy in Calgary, Alberta. After leaving his consultancy, he became Manager, Community Affairs for the Ontario Ministry of the Environment. In that capacity, Mr. Evans was responsible

for supporting the implementation of the Ministry policy on public consultation including developing consultation training materials for Ministry staff. Presently, David Evans is a community affairs consultant working out of Toronto. He provides public consultation, conflict resolution and strategic communications services to his public and private sector clients. Mr. Evans received his Bachelor of Arts (Anthropology) from McMaster University and his Master of Arts (Sociological Anthropology) from the University of Calgary. He is also a certified teacher in Alberta and Ontario and has taught for five years.

Len Gertler is a full-time Vice-Chair, appointed to the Board in May, 1990. He is a Professor Emeritus, University of Waterloo, and a Fellow of the Canadian Institute of Planners. He has combined an interest in planning, development, and environmental management in both an urban and regional context, and in Canada and abroad. Foreign assignments have included work in Southeast Asia and the Caribbean for United Nations agencies as well as the Canadian International Development Agency. He is the author and editor of several books on environmental and planning issues. In April 1991, he was cross-appointed to the Ontario Environmental Appeal Board.

Jim Kingham is a full-time Vice-Chair who has been involved in environmental work for 25 years as a scientist, negotiator and manager. He developed the Canadian Ocean Dumping Control Bill, negotiated certain marine environmental protection and technology issues associated with the Law of the Sea and chaired a standing Working Group of the U.N. Maritime Organization. He also developed a federal Environmental Emergency Prevention Program and

strategic plans for the clean up of the Great Lakes and for the work of the Environmental Protection Service. Before joining the Board in 1987, Dr. Kingham was the Regional Director-General for the Ontario Region of Environment Canada and was the Canadian Chairman of the IJC Water Quality Board.

Anne Koven is a full-time Vice-Chair from Toronto. Appointed to the Board in April, 1987, Ms. Koven holds a Masters' degree in Public Administration from Queen's University. She was Research Director of the Upper Ottawa Landfill Site Study, commissioned by the Ontario Ministry of Health, from 1981 to 1986. She has worked in the mining industry and with the Ontario Advisory Council on Occupational Health and Safety.

Alan D. Levy is a full-time Vice-Chair from Toronto, appointed to the Board in May, 1990. He holds a B.A. and an LL.B. from the University of Toronto. For 18 years he practised law in the area of litigation, appearing before both courts and tribunals. Mr. Levy was one of the founders of the Canadian Environmental Law Association, and remained a member of its board of directors for 20 years until his appointment. In April 1991, he was cross-appointed as a member of the Ontario Environmental Appeal Board.

Elie W. Martel is a full-time Vice-Chair from Capreol. Mr. Martel was a teacher and elementary school principal prior to 1967 when he was elected to the Legislative Assembly. Mr. Martel served as the NDP member for Sudbury East until 1987 and was House Leader for his party from 1978 to October 1985. As a member he did extensive work on environmental issues. Mr. Martel is the author of two major reports on health and

safety in the workplace. He was appointed to the Board in March, 1988.

John McClellan is a part-time member from Brantford. He is a geographer and has been involved in land use matters for 30 years. From 1974 to 1988 he was Executive Director of the Prince Edward Island Land Use Commission. Since 1989 he has been a Hearing Officer under the Niagara Escarpment Planning and Development Act. He was cross-appointed to the Board on January 1, 1991.

Mary G. Munro is full-time Executive Vice-Chair of the Board from Burlington. She is a Registered Nurse by profession and has been active in community and environmental affairs for many years, having served on various boards and commissions. Mrs. Munro has been City Alderman, Regional Councillor and Mayor of the City of Burlington. She was appointed to the Board on September 1, 1981.

Linda Pugsley joined the Board as a part time member in July 1992. With a background in nursing and citizen participation, Linda Pugsley also served as Alderman on Burlington City Council from 1978 to 1992. While on Burlington City Council, she concentrated on such areas as planning and development, strategic planning, environmental management and administration and finance. She also served on the Municipal Advisory Committee of the Niagara Escarpment Commission, Five Year Review.

Jim Robb is a full-time Vice-Chair with the Environmental Assessment Board and he is also cross-appointed to the Ontario Environmental Appeal Board. He holds

Bachelor of Science and Forestry degrees and a Commercial Pilot Licence. Prior to joining the Board in September 1990, Mr. Robb owned and operated an urban tree care business. As the past Chairman of Save the Rouge Valley System, he worked on watershed conservation issues. Mr. Robb has written for various publications and his photographic credits include the cover of the Crombie Royal Commission Report, *Watershed*.

Administrative Services

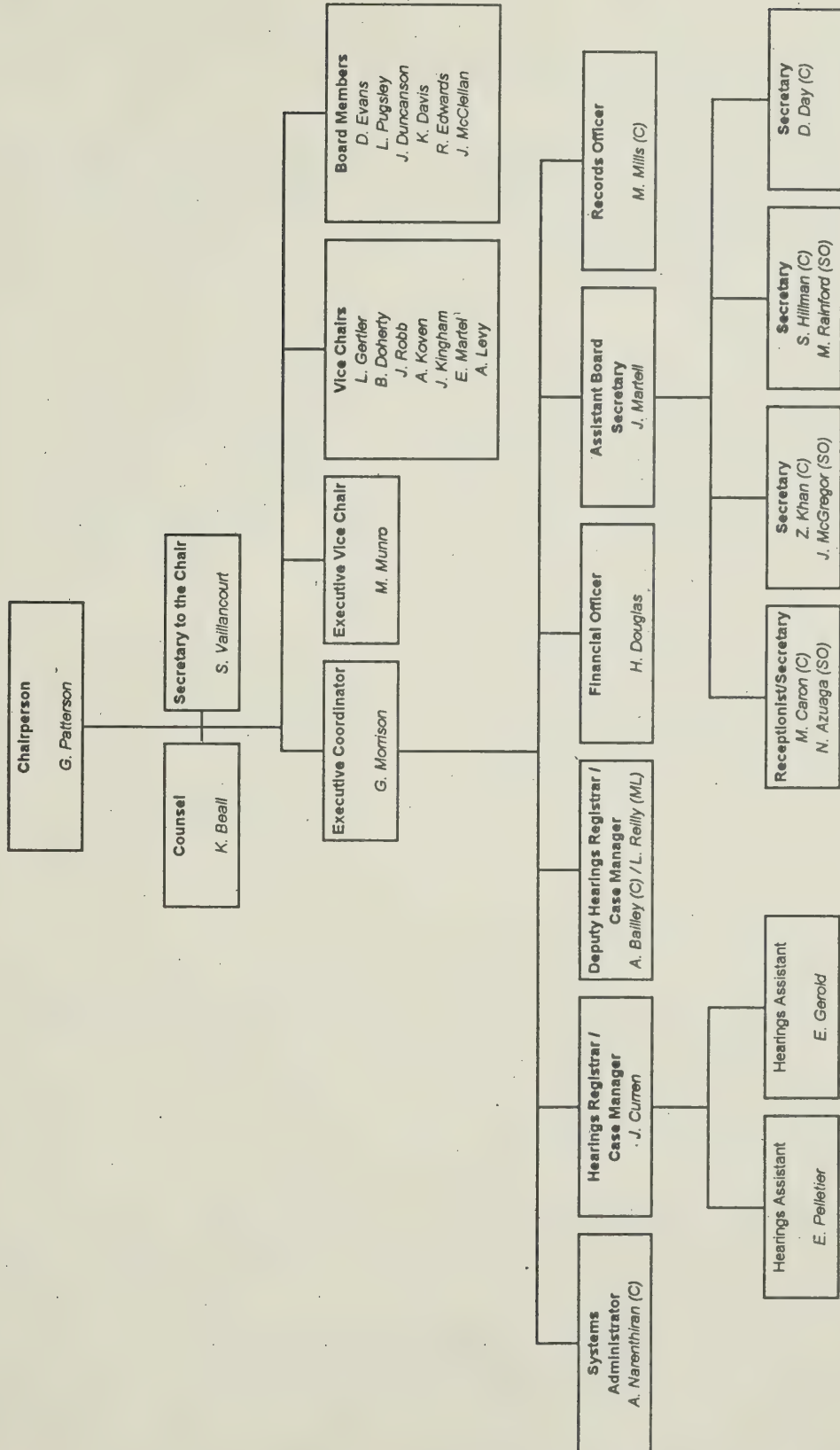
Over the past year, we have completed a number of human resources initiatives. Upon the retirement of Norma Geniole, who was for many years the administrative assistant for the Niagara Escarpment Hearing Office, we have integrated that position more fully into our general hearing administration. Eva Gerold and Evelyn Pelletier are Hearings Assistants for both Niagara Escarpment matters and for hearings under the *Environmental Assessment Act*, the *Environmental Protection Act*, and the *Consolidated Hearings Act*. They assist Jim Curren, Board Secretary, and Laura Reilly, Deputy Board Secretary, in the case management and administrative work leading up to hearings, in liaison with the parties, participants, and public in the hearing context, and in attending the hearings, where necessary, to assist in their smooth operation. All are assisted by our dedicated secretaries and receptionist, who are also responsible, under the supervision of Janet Martell, for the production and distribution of Board decisions.

Having completed the necessary human resources processes, we will be filling permanent records officer and systems officer positions shortly. We have also obtained approval for a number of new positions, and are in various stages of completing the hiring processes for them. We have hired a counsel to assist with the upcoming IWA hearings, and a financial officer to assist with funding, costs, and general financial matters, and will be hiring three administrative assistants for the three IWA hearing sites as they are needed. We are looking forward to the challenges

that these controversial hearings will bring to our Board, not only to provide expeditious hearing processes for the three undertakings involved, but to manage the extensive documentation, satisfy the public interest in up-to-date information on the progress of the hearings, and issue prompt rulings, decisions and orders.

The following organizational chart illustrates our present staffing arrangements:

Organizational Chart



Overview of the Relevant Legislation

Purpose	Initiative for Hearing
<p>Environmental Assessment Act (EAA)</p> <p>- "The betterment of the people of the whole or any part of Ontario by providing for the protection conservation and wise management in Ontario of the environment".</p>	<p>The Minister of Environment and Energy may require a hearing in response to a request or on the Minister's own initiative (sections 12 and 13).</p>
<p>Environmental Protection Act (EPA)*</p> <p>- "To provide for the protection and conservation of the natural environment".</p>	<p>The Director of Approvals shall require a hearing for waste disposal sites (section 30). The Director may require a hearing for waste disposal sites and waste management sites (section 32) or to determine whether a municipal by-law should apply to a proposed waste disposal site (section 36).</p>
<p>Ontario Water Resources Act (OWRA)</p> <p>- To permit the regulation of water and sewage services.</p>	<p>The Director of Approvals shall require a hearing when a proposed sewage works enters another municipality or prior to defining an area of public water and sewage service (section 54). The Director may require a hearing with respect to a sewage works within a single municipality (section 55).</p>
<p>Consolidated Hearings Act (CHA)</p> <p>- To streamline the hearings process when more than one hearing is required before more than one tribunal.</p>	<p>A proponent of an undertaking shall request that hearings be consolidated and heard by a joint board (section 4).</p>
<p>Intervenor Funding Project Act (IFPA)</p> <p>- To provide funding for intervenors to enable their effective participation at hearings.</p>	<p>A party granted intervenor status for a hearing before the EAB or the Joint Board may apply for intervenor funding (section 3).</p>

*The Environmental Assessment Board is also responsible for the operation of the Board of Negotiations established pursuant to section 172 of the Environmental Protection Act. During this fiscal year the Board did not receive any notices for negotiations nor did it hold a negotiations meeting.

Note: All section numbers refer to the relevant legislation in the Revised Statutes of Ontario 1990. For full particulars refer to the relevant legislation.

Overview of the Relevant Legislation

The Board's Role

Appeal

EAA

The Board determines the acceptability of an environmental assessment for a proposed provincial and municipal undertaking (and private undertaking where designated by the Minister). The Board may accept the undertaking, reject it or accept it on terms (sections 12 and 13).

Within 28 days the Minister may vary or substitute the Board's decision, or require a new hearing (section 23).

EPA

The Board decides whether a certificate of approval should be issued, and if so, what its terms and conditions should be. The Board's decision must be implemented by the Director (sections 33 and 39).

A party to a proceeding may appeal from the Board's decision to the Divisional Court on a question of law and on any other question to Cabinet (section 34).

OWRA

The Board decides whether a certificate of approval should be issued, and if so what its terms and conditions should be. The Board is not required to hold a hearing if no person objects to the proposed works or if the objections are insufficient. The Board's decision must be implemented by the Director (sections 7 and 8).

A party to a proceeding may appeal from the Board's decision to the Divisional Court on a question of law and on any other question to Cabinet (section 9).

CHA

A Joint Board may hold a hearing, and make a decision in respect of matters that could be considered at hearings under the enumerated statutes. It has broad powers to defer the consideration of any matter (sections 4 and 5).

Within 28 days the Cabinet may confirm, vary or rescind a Joint Board's decision or it may require a new hearing (section 13).

IFPA

In a proceeding before the EAB or a Joint Board an intervenor may apply for intervenor funding. Upon receipt of the application a funding panel (not being part of the hearing panel) shall decide any application for intervenor funding, including issues of eligibility and amount of funding (section 4).

An appeal lies to the Ontario Court (General Division) only on a matter of law (section 13).

A Strategic Plan for the Board

The Board continues to implement its strategic planning strategy which was initiated in 1993. Objectives set in the original plan are reviewed periodically and an annual review of the whole plan is undertaken. The following items arising out of the strategic planning process are of particular interest:

Alternative Dispute Resolution

The Board's commitment to alternative dispute resolution (ADR) as an element of its decision-making process is expressed by providing expanded opportunities to resolve issues before and during hearings. As well, Board members continue to expand their knowledge of ADR through training.

Board members continue to use pre-hearing settlement meetings as an early opportunity for scoping and resolving issues. These meetings have been useful in many of the landfill expansion hearings under the *Environmental Protection Act*.

During the hearing of the City of Peterborough's application for a 5-year expansion of its existing landfill, prior negotiations and in-hearing negotiations allowed for all but a few matters to be resolved by the parties. The efforts to successfully resolve all the issues between the parties led to a substantially shortened hearing, covering 8 hours over three days.

The Board is now applying a protocol for considering agreements among parties to promote ADR before the hearing and consequently to reduce the length of hearings.

In an Order in Council the Board was asked by the Government to facilitate the distribution of participant funding provided by the Interim Waste Authority (IWA). A Board member and an outside mediator worked with the IWA and 20 applicants to develop an agreement on how over \$1.5 million of participant funding would be distributed. Ten of the applicants signed an agreement; seven applicants were not part of the agreement; and three applicants withdrew their applications. The agreement included a proviso that if a funding panel determined that any of the seven applicants, not party to the agreement, should receive funding, the funds would be found from within the agreement. The funding panel, after hearing from the seven applicants, determined that only one was eligible for funding. This applicant was subsequently included in the negotiated distribution of the funding.

In last year's annual report, we noted that the Board facilitated a negotiation process for the distribution of participant funding for the Niagara Road#12 landfill application. The Board continues to be active in this application, acting in a mediation and, if necessary, an arbitration role in order to dispose of property value protection issues identified in a settlement agreement between the parties.

Again this year, a Board member worked with a group of University of Toronto students who prepared a report entitled *Effective Public Participation in the Ontario Environmental Assessment Board's Hearing Process*. This report will be helpful to the Board in reducing conflict through improved public

participation in Board activities. The Board is actively implementing recommendations on an expanded and more helpful Citizen's Guide, as well as recommendations for improving communication between the Board and participants during hearings.

The Board conducted a two-day mediation training session in conjunction with the Ontario Energy Board in March, 1994. The goal of the session was not only to better understand mediation, but also to identify opportunities for the application of mediation to the Board's activities. The next step is team mediation or a coaching process which will involve Board members and experienced mediators working together to improve the Board members' mediation and facilitation skills.

EAB Advisory Committee

The EAB Advisory Committee was established by the Chair in 1993 to obtain advice and assistance from people who have had direct involvement with the Board's process. The twin goals of the Committee are to improve communication between the Board and the groups that it serves, and to develop procedures which will result in hearings which are more effective and efficient. The Committee presently has 13 regular participants, including government, private practice and public interest lawyers (who participate in Board hearings on behalf of clients that span the spectrum of interests from the MOEE, Crown Corporations, Metro Toronto, smaller municipalities and private proponents, citizens groups, First Nations communities and environmental organizations), a delegate from the Environmental Section of the Canadian Bar Association - Ontario, an environmental planner, an environmental

activist, organizer and consultant, four Board members (one of whom is a part-time Board member, a member of the First Nations and is actively involved in related issues) and the EAB executive coordinator. It has been meeting monthly since September 1993.

The discussions have included such topics as the problems and complaints of parties to EAB hearings, the concerns of lawyers and consultants, procedural matters raised by Board members and staff, and improvement of the Board's procedures which can be implemented without legislative amendments. Work continues on the development of the Board's generic procedural directions which are issued at individual hearings, a practice direction on the form, contents and filing of documents, and procedures intended to facilitate the participation of First Nations in the hearing process. The Committee has assisted the Board to finalize a practice direction on constitutional questions and/or charter issues, and a protocol for the review of agreements which require the Board's approval.

The Committee is expected to continue to meet regularly during the 94/95 year.

Training

In discussions leading up to the Strategic Plan, there was a strong consensus among members of the Board on the importance of continuous learning. The challenge arises from several considerations: (i) the complexity of the environmental issues addressed in hearings and decisions; (ii) the varying requirements of the mix of legislation that governs the work of the Board; (iii) the necessity to steadily improve and refine the hearing process and the incisiveness

of the Board decisions; and (iv) the constantly unfolding nature of the Board's information base, as each published decision adds to the cumulative insights - and awareness of constraints - affecting the views and judgement of Board members.

To respond to these compelling needs, the Board has been working at fulfilling a learning program involving two main types of activity: (1) documentation of basic information, including items on legislation, noteworthy decision precedents, administrative procedures and practices, and special topics like intervenor funding; and (2) a series of learning workshops. The first forms a body of convenient reference material for use as the need arises; and the second an on-going avenue for critical learning.

The underlying premise of the workshop is that it provides a forum for mutual learning where Board members from diverse backgrounds - for example lawyers, scientists, resources specialists or community planners - can trade knowledge, insights, and their different "views of the world". It is also an opportunity to selectively bring in outside "resource persons" to convey special information and skills; to provide perspective on the Board's work; and to serve as catalysts for debate and innovation.

During the past year, these purposes have been pursued through such themes as intervenor funding, mediation, and joint hearings and decisions (through the *Consolidated Hearings Act*). A valuable feature of these workshops has been the invited participation of other tribunals, sharing some common interests, like the Ontario Municipal Board (as a joint sponsor), the Ontario Energy Board, the Environmental Compensation Corporation, and the

Mining and Lands Commissioner. The papers generated by each workshop, including a "highlights" of proceedings, extend its educational value.

In 1993-94, the Board also started a mentor program - the pairing up of a new member with a more established member of the Board. This gives new members an opportunity to share the experience and hard-won wisdom of long-term members through dialogue, through advice on important decisions and other readings, and through serving together as members of panels.

Among the learning initiatives currently underway is the selection for study by Board members of salient literature, through a selective reading list under the topics of environmental law, public policy, scientific and technical matters, and hearing and decision-making processes.

Interim Landfill Site Expansions

Hearings Under the Environmental Protection Act

During the period covered by this annual report, the EAB and joint boards have dealt with significant changes in waste disposal sites and waste management processes. These changes have been most evident in applications for approval of expansion of existing landfill sites. These have been termed "interim" expansions, in keeping with the policy of the Ministry of Environment and Energy (MOEE): Policy 03-05 EAA Interim Expansions of Municipal Landfills.

Applications for interim expansions have been exempted from the requirements of the Environmental Assessment Act by order of the Minister, pursuant to section 29 of the Act. Each order has allowed for a one-only, five year expansion in order to provide waste disposal capacity until the Waste Management Master Plan for the area had been completed and a new long term site established. Each exemption order has required the proponent to apply for approval, pursuant to the provisions of the *Environmental Protection Act*, for the five year expansion.

Eight decisions related to landfill site expansions were released by the Board during the year covered by this report. An overview of these decisions reveals many common elements of progress and many common concerns with the evolution of waste management processes.

In all cases, the Waste Management Master Plan (WMMP) process proved to be lengthier and less productive than anticipated. The evidence at these hearings was that the process can consume 4 to 13 years. Although the Ministry does not have the statutory power to control the process, it has recently moved to expedite it and, at the same time, to streamline the environmental assessment approvals process.

The lengthy WMMP process has resulted in many waste disposal sites being allowed to continue to operate under a series of Emergency Certificates of Approval for several years. In almost every case reviewed for this report, the existing sites had been approved several years ago and were less than ideal by today's standards. Leachate migration to groundwater and surface water, to nearby wetlands and to off-site properties was

common. Operating practices in some cases would be unacceptable in the present day regime.

In many cases, the interim expansion approval process presented the only real opportunity to require that the site be properly engineered to collect and treat leachate, to establish a comprehensive monitoring program, and to provide contingency plans for remediation if the engineered facilities should fail to protect the natural environment.

On the positive side, many municipalities have initiated comprehensive and effective waste diversion programs. These include recycling programs, home and/or municipal composting, and household hazardous waste collection programs.

Public involvement in the approvals process has increased and is occurring at an earlier stage of the proponent's project planning. In many cases, the public has contributed to better planning and to focussing on issues of concern.

The importance of public involvement in the ongoing management of a waste disposal site was recognized in each decision of the Board. In every case, the Board has required, as a condition of approval, the establishment of a Public Review or Advisory Committee to receive and review all operational and monitoring reports related to the site in question.

The hearing process itself has been enhanced and expedited by the pre-hearing consultations and negotiations required by the Board. The pre-hearing meeting of expert witnesses has effectively narrowed the issues in dispute. In addition, the cooperative efforts of the

public, the proponent and the Ministry to resolve issues to be adjudicated by the Board have proven to be productive, not only in shortening the hearing time, but also in ensuring that more consensual solutions are adopted.

The issue of property protection arose in two of the eight decisions reviewed.

In one case (Green Lane Landfill EP-92-06), the Board found it did not have the jurisdiction under the EPA to establish a Property Value Protection Plan. The Board agreed with Ministry counsel that the definition of environmental impact in the EPA could not be extended to include economic disruption.

In the second case (Eastview Road Landfill EP-92-02), the Board concluded otherwise. It said: "For all costs related to landfill to be internalized, the impact on neighbouring property values must be considered." The Board concluded that a compensation plan for property depreciation would create a financial incentive for the landfill site operator to reduce nuisance impacts and minimize the effects on neighbouring property values. The Board said it believed s.39(2), referring to "nuisance" as a factor to be considered in regard to a landfill site application, gave it the necessary authority to establish a land value protection plan. Accordingly, as a condition of approval, the Board required that a property value compensation plan come into force in the event that certain other conditions were not met. Appeals to Divisional Court and to Cabinet have been filed.

Cases Reviewed

CH-92-07
Township of Charlottenburgh-North
Landfill Site
May 28, 1993

EP-92-03
Township of Faraday Landfill
June 9, 1993

EP-92-06
Green Lane Landfill
August 12, 1993

EP-92-02
Eastview Road Landfill (Guelph)
September 22, 1993

CH-91-09
Mountain Road Landfill,
Niagara Falls
September 30, 1993

EP-92-07
Town of Kapuskasing Landfill
November 30, 1993

EP-93-04
Township of Asphodel Landfill
March 4, 1994

EP-93-05
Town of Kincardine
March 10, 1994

Timber Management Decision

The Environmental Assessment Board decision setting conditions under which the Ministry of Natural Resources may pursue timber management on Crown lands in Northern Ontario was issued on April 20, 1994.

The Panel, concluding Ontario's longest environmental assessment hearing, approved the undertaking of timber management planning subject to 107 pages of terms and conditions intended to expand community involvement in forestry decisions, protect the diversity of the public forests and sustain an industry vital to the province's prosperity.

"The public owners of Ontario's forests demand a say in their management. The new timber management planning process acknowledges that the public cannot be shut out of making decisions," the Panel wrote in the 561-page decision. A Local Citizens Committee will be established in every management unit to be consulted during planning, and each timber management planning team will include a member from the Local Citizens Committee.

Starting in May 1988, the Panel heard evidence and argument for 411 hearing days, compiling more than 70,000 pages of transcript and 2,323 exhibits. Part of its decision was that MNR's environmental assessment, as amplified by evidence at the hearing, was acceptable under the provisions of the *Environmental Assessment Act*.

The approval applied to 385,000 square kilometres of Crown forest stretching from southeast of Algonquin Park across the province to the Manitoba border.

The decision considered evidence of the social and economic impact of the forest industry on the entire province, but especially the north, while recommending that the government investigate ways of keeping more of the economic benefits in Northern Ontario.

The Panel weighed evidence for and against clearcutting and concluded: "Public opposition to large clearcuts was loud and clear and must be given due weight in establishing public policy on this issue. We have done so in our condition setting a range of up to 260 hectares for clearcuts, with room for exceptions."

One chapter of the decision deals with herbicides and insecticides. The Panel compared the use of herbicides in forestry in Northern Ontario with more intensive use of the same chemicals in agriculture and lawn care annually in Southern Ontario, and decided that the need to ensure regeneration of preferred species such as black spruce and jack pine on certain sites justified aerial spraying of herbicides under strict controls. The Panel supported the current practice of the Minister of Natural Resources on insecticides, which permits aerial spraying of biological agents (such as B.t.) but not of chemical insecticides.

The Panel ordered several conditions to conserve the biodiversity of Ontario's forests, including provisions to protect old growth red and white pine, to require production of a provincial policy on roadless wilderness areas and to expand the province's existing "featured species" policy to protect habitat for the pileated woodpecker and the pine marten, two species which prefer older forests. The Panel cited evidence that the existing policy protects habitat for an estimated 70 percent of vertebrate species, and said protecting habitat for the pileated woodpecker and pine marten should help protect some or all of the remaining 30 percent.

The decision also examines evidence at the hearing on First Nations and Aboriginal communities, which the Panel says "convinced us of the historical

and present day exclusion of native communities from sharing in the social and economic benefits enjoyed by non-native communities from timber operations on Crown land." The Panel ordered conditions requiring MNR to negotiate with the First Nations and Aboriginal communities to give them an opportunity to share in the social and economic benefits and requiring a special Native Consultation Process in timber management planning. The Panel also recommended that the governments of Ontario and Canada move quickly on broader negotiations with First Nations and Aboriginal peoples.

Redland Quarries Inc. - Steetley South Quarry Landfill Proposal

Redland Quarries Inc. has applied for permission to construct and operate a large, highly engineered landfill site in what is known as the Steetley South Quarry, located in the Town of Flamborough in the Regional Municipality of Hamilton-Wentworth.

The site capacity proposed is for 26 million tonnes of non-hazardous solid waste, at a rate of 2 million tonnes per year for thirteen years. The service area is to be the entire province of Ontario. The proposal also calls for landfilling concurrent with quarrying the remaining aggregate from the site. The issues in the hearing are complicated and contentious, pertaining to compliance with the *Environmental Assessment Act*, the *Environmental Protection Act*, the *Ontario Water Resources Act*, the *Planning Act* and the *Niagara Escarpment Planning and Development Act*.

The matter is being heard under the *Consolidated Hearings Act* by a Joint Board consisting of one member from the Ontario Municipal Board and two members from the Environmental Assessment Board. In addition to the proponent, parties presenting oral argument were: the Regional Municipality of Hamilton-Wentworth, (in conjunction with the Hamilton Region Conservation Authority); Greensville Against Serious Pollution (GASP); the Niagara Escarpment Commission; Taro Aggregates; and the Ministry of Environment and Energy.

The hearing of evidence began in May of 1993 and after 133 hearing days and over four hundred exhibits, the Board is preparing to hear oral argument and then to write its decision.

North Simcoe Landfill Site Application

In 1989, a joint board consisting of Robert B. Eisen and Dorothy H. McRobb, conducted a hearing in respect of an application brought by the North Simcoe Waste Management Association (NSWMA) for a landfill site to be situated in the Township of Tiny. The site was to serve the members of the Association consisting of the towns of Midland and Penetanguishene, the Township of Tay and the villages of Port McNicoll and Victoria together with the Township of Tiny. The application was supported by the then Ministry of the Environment and opposed by the Township of Tiny and the Wye Citizens' Group and others.

The application was turned down by the Joint Board mainly on the basis of a flawed process that was found to be in breach of the requirements of the *Environmental Assessment Act*. The

Board, in its decision of November 1989, was able to conclude that certain areas in the North Simcoe region, not adequately considered by the Association, might offer good landfill potential. It was unable to conclude whether the site preferred by the proponent, known as Site 41, was the "best" site that would emerge from the application of a satisfactory site selection process.

The Board's decision was appealed to the Lieutenant Governor in Council, who in June 1990, enacted Order in Council 1528-90 (OIC) which by its own wording ordered that the decision contained therein "be substituted for that of the joint board". The OIC allows the proponent "an opportunity" to produce evidence of further investigations of areas comparable to Site 41. It was acknowledged in the body of the document that Site 41 may once again be the preferred site in such event it outlined the evidence that the proponent would be required to produce. The OIC was accompanied by a statement approved by cabinet which explained and amplified the provisions of the formal document.

The proponent, now the Corporation of the County of Simcoe as successor to NSWMA, advised the Joint Board that its preferred site remains Site 41 and that it wished to resume the hearing as provided by the OIC.

In July and August of 1992 preliminary hearings were held preparatory to the commencement of the resumed hearing. The Joint Board now consisted of a sole member, Mr. Eisen, as a result of the earlier retirement of Ms. McRobb from the Ontario Municipal Board. The preliminary hearings dealt in large part with the interpretation of the provisions of the OIC and the accompanying cabinet statement. During these hearings, the Township of Tiny

posed a number of questions to the Board seeking to have the Board clarify its understanding of the two documents.

In September 1992, the Board issued guidelines together with answers to the questions submitted by the Township of Tiny. The Township then instituted a judicial review of the guidelines and answers and the Divisional Court, in its decision of April 19, 1993 upheld the Board's guidelines and its answers to the Townships questions.

The resumed hearing commenced on May 3, 1993 as had been previously scheduled and some 90 days of hearings had been held by the end of May 1994 in addition to 68 days in 1989. It is expected that the taking of evidence and submission of argument will be completed by early September 1994.

IWA Planning

Over the past year, we have been aware that the Interim Waste Authority will be asking three separate Joint Boards under the *Consolidated Hearings Act* to consider applications for three separate undertakings to provide landfill sites. These sites will be located in Peel Region, in Durham Region, and in York Region. The Joint Board was asked to provide a Funding Panel to distribute Participant Funding up to an amount of \$1.7 million to study the proposals. The first step in the participant funding process was mediation, which determined the distribution of a large portion of the available funding. One of our Board members assisted in the mediation. The Funding Panel, composed of two EAB members and one member from the OMB, determined the remaining claims.

Meanwhile, we have been considering how to ensure that these

large and controversial hearings are managed in the most efficient and effective way. We have engaged counsel to assist with the hearings, and obtained approval for additional staff as needed. The Chair of the OMB has met with the Chair of the EAB on several occasions to discuss possible makeup of the three panels, and the resources required for their support. We have obtained some additional space adjacent to our present office for storage of the voluminous documentation, additional Board member offices, and staff accommodation.

Once the Panels have been established to hear each separate application, they will consider the possibilities for expeditious consideration of issues which are common to the three sites. Preliminary hearings are anticipated in the late fall of 1994 or early in 1995.

Niagara Escarpment Hearing Office

There were 76 appeals of NEC decisions during the 1993-1994 fiscal year. A total of 47 hearings were held.

Of these:

- 3 went to a Consolidated Hearing,
- 25 appeals/applications were withdrawn,
- 2 were adjourned indefinitely,
- Decisions by the Minister have been made on 58 applications.

Of the decisions made, the Minister has concurred with the recommendations of the hearing officers on all but two applications.

In addition, two Plan Amendment hearings were held.

Index of Decisions

Consolidated Hearings Act

APPLICANT: County of Lambton
Sarnia Landfill **CH-90-12(F)**

The County of Lambton made an application to expand the capacity of the existing landfill site which has been used since 1970 for the disposal of residential, commercial and solid non-hazardous waste from the City of Sarnia (both the former City of Sarnia and the Town of Clearwater) and the Village of Point Edward.

A preliminary hearing was held on November 1, 1993 and party status was determined. An application for intervenor funding was made on behalf of People Against Landfill Expansion (P.A.L.E.). A Funding Panel was appointed. The County of Lambton was named funding proponent.

On November 25, 1993, counsel for P.A.L.E. advised the Board that the County of Lambton had approved the contents of their funding application. On November 30, 1993, the Board received a confirming letter from the County of Lambton's counsel.

ISSUES: Since the Proponent consented to the application there were no issues to be determined and a funding hearing was not held.

DECISION: The panel met to review the application. A decision was released on December 17, 1993 awarding \$45,093.95 to P.A.L.E. to be used for the purposes outlined in Schedules attached to the decision.

RELEASE DATE: December 17, 1993

APPLICANT: Ontario Hydro
Bulk Transmission West of London **CH-90-13(F)**

Parties requested funding under the *Intervenor Funding Project Act* Following preliminary meetings the Board released a *Ruling on Party Status and Issues* delineating issues. In some cases issues were allocated to one party. In other cases there was duplication in the recognised issues.

ISSUES: Which issues would be funded for which parties where duplication is apparent or likely.

DECISION: In making their determination of individual requests for funding the Board considered the extent of the specific intervenor's interest, the relationship of the funding requested to the established interest and the issues enumerated by the Joint Board, the reasonableness, in funding terms, of the extent of the effort being proposed, and potential overlap and duplication.

Funding was awarded to all six funding applicants for a total amount of \$589,546.81.

RELEASE DATE: June 28, 1993

APPLICANT: Reclamation System Inc. (RSI)

CH-91-03

Reclamation Systems Inc. (RSI) sought approval to operate a solid waste disposal site in the Acton Quarry. At the preliminary hearing, the Board's jurisdiction to hear the matter was challenged on the grounds that the requirements of the *Consolidated Hearings Act* (CHA) had not been met.

The Board found that it did not have the jurisdiction to hear the matter and stated that it would consider the matter of costs. Requests for costs totalling over three quarters of a million dollars were received.

Subsequent to the Board's decision, the Divisional Court (in another matter) found that the CHA does not require jurisdictional pre-hearing requirements. The Court stated that a joint board has broad authority to dismiss, adjourn, or defer matters if the information or level of preparation of the proponent is inadequate to enable the board to make a proper determination.

ISSUES: Several issues were raised including: did the Board have jurisdiction to award costs, what were the appropriate criteria for evaluating applications for costs and what was the scope of any award of costs.

DECISION: The Board determined that it had broad discretionary powers to determine and award costs in a proceeding before the Joint Board. A proceeding before the Board had been commenced and the Board had the jurisdiction to consider costs for that proceeding.

RSI's application had not reached the level of preparedness necessary to allow the Board to make a proper determination. If the Board had taken jurisdiction over the RSI matter it would have been necessary to dismiss, adjourn or defer the application until the level of preparedness was adequate. Therefore, payment of costs should be

made regardless of the jurisdictional question and in accordance with the Board's usual criteria.

Costs relating to preparation for and attendance at the preliminary jurisdiction motion should be considered. The other preparatory costs such as technical and legal review of RSI's proposals should be deferred for the consideration of the panel that will hear evidence on the application.

Costs were awarded to six intervenors and denied to four.

RELEASE DATE: July 22, 1993

APPLICANT: City of Niagara Falls **CH-91-09**
Mountain Road Landfill

The City of Niagara Falls applied for approval for an extension of its existing landfill site on Mountain Road. This extension involves an increase in both the area and height of the existing landfill.

ISSUES: Due to the history of rock spoil dumping near the site and its geological and hydrological characteristics, should approval of the site be given?

Did Amendment 52/89 of the Niagara Escarpment Plan, prohibiting waste disposal sites, apply to the Mountain Road Landfill site?

DECISION: The Board found:

by the exercise of technical ingenuity and management vigilance, the site could continue to be operated safely for a limited period of time but a longer term alternative should be sought.

Amendment 52/89 of the Niagara Escarpment Plan did not apply to the landfill site.

The Board approved the application for an extension of the height of the Mountain Road Landfill site and the widening of the buffer area around the site subject to specified conditions and denied the appeals against the Decision of the Niagara Escarpment Commission (April 26, 1991) to grant a Development Permit for the upward extension of the Mountain Road Landfill.

RELEASE DATE: September 30, 1993

APPLICANT:

Chedoke Terrace Inc.

CH-91-11

The Applicant sought approval to build a residential development which included apartment buildings and townhouses. The lands to be used were near a railway marshalling yard, a municipal public works yard and a golf course. The application involved 3 matters; application for an amendment to the official plan redesignating the lands from industrial to commercial (denied earlier by the Corporation of the City of Hamilton); appeal of the decision of the Niagara Escarpment Commission denying an application for a development permit; and an appeal of a decision of the Hamilton -Wentworth Region Land Division Committee denying an application for severance.

Parties opposed to the proposal argued that the existing use of the surrounding lands was incompatible with the proposed residential development and could lead to complaints from future residents of the proposed development over noise, lights, use of equipment and golf balls.

ISSUES:

Whether or not the proposed use was inappropriate because of the potential for adverse impacts caused by the existing use of the adjacent lands.

DECISION:

The Board found that the concerns of the existing users about the impacts caused to and by the proposed development could be met through conditions attached to the approvals including building height limitations, window exposures, noise attenuation features, warning clauses in agreements of purchase and sale, visual screening and minimum set back requirements. The Board approved the application and approved the amendments to the official plan, the application for a development permit, and the conveyance of land for residential purposes.

RELEASE DATE

July 30, 1993

APPLICANT:

City of Orillia
Proposal to Amend Official Plan and
Expropriate Land for Public Parkland

CH-92-02

The Corporation of the City of Orillia (the City) passed by-laws to expropriate part of the waterlot in front of Lot 9, Concession 5, in the Township of Orillia (Southern Division), City of Orillia, in the County of Simcoe, and for approval of Official Plan Amendment No. 94 for the purpose of adding "public parks" as a permitted use in Waterfront Commercial designation in the Official Plan of the City of Orillia expanding the City's public park area.

Champlain Landing Corporation, the owners of the land proposed to be expropriated, requested that the Official Plan Amendment be referred to the Ontario Municipal Board. The planning and expropriation issues were referred to the Hearings Registrar of the Office of Consolidated Hearings and a joint board was established.

The land in question was divided into Blocks A, B, C and D. At the outset of the hearing, the appellant company withdrew its opposition to expropriation of Blocks A, B and D while still objecting to the proposed expropriation of Block C.

ISSUE: The Joint Board heard no argument from any party or witness to the effect that the park should not be extended; rather the Joint Board heard only how it should happen.

DECISION: After hearing all the evidence, the Joint Board found the expropriation of all the land in question, including Block C, to be fair, sound and reasonably necessary in the achievement of its objectives as stated in Official Plan Amendment 94. Therefore, the Board approved the expropriation of lands in question.

RELEASE DATE: October 29, 1993

APPLICANT: John Blake Gartshore **CH-92-04**

This hearing concerns two appeals; one by the Niagara Escarpment Commission from a decision of the Land Division Committee of the Regional Municipality of Hamilton-Wentworth granting an application for consent to sever Lots 38 and 39, Concession 1 and 2 in the Town of Ancaster; one by John Blake Gartshore from a decision of the Niagara Escarpment Commission refusing an application for development permit to construct a one storey, single family dwelling plus an attached garage, with a private sewage disposal system and driveway.

A conference call was agreed to by all parties and held as constituting a hearing to deal with the appeal of the Niagara Escarpment Commission (NEC) from the severance granted to Mr. Gartshore.

Mr. Gartshore withdrew his appeal from the decision of the NEC not to issue a development permit; however he was not willing to withdraw the application upon which the severance was granted.

ISSUES: Should the severance have been granted.

DECISION: The property lies within the Escarpment Protection Area of the Niagara Escarpment Plan. Section 1.4(3) of the New Lots Policy

allows the creation of one lot where no lots have been created in an original township half lot.

Because there are currently 20 lots within the half lot in question, the Joint Board allowed the appeal of the NEC and ordered that a severance not be granted. Also, the decision of the NEC was confirmed.

RELEASE DATE: March 9, 1994

APPLICANT: Township of Charlottenburgh
North Landfill Site

CH-92-07

This is an application by the Township of Charlottenburgh for an amendment to the Provisional Certificate of Approval for its North Landfill waste disposal site for a further five year period; for approval of an amendment to the Official Plan of the Township and to change the existing designation of the site in order to permit the existing solid waste disposal site, a waste transfer station and a communications tower.

At the outset of the hearing all parties indicated that there was no disagreement with respect to the basic findings, the type of monitoring to be imposed or the conditions to be imposed.

ISSUES: The only issue before the Board was the effect of the landfill operations on the adjacent Class 1 wetland.

DECISION: The Board reviewed the evidence and concluded that the wetland's water quality was not impaired by leachate from the site. The Board also determined that the Provincial Policy on Wetland with respect to the development on lands adjacent to wetland had been complied with.

The Board approved the emergency approval application subject to specified conditions and extended the date of its expiry to December 31, 1993 in order to allow sufficient time for the Environmental Assessment board to consider the Township's application for a five year interim expansion of the site.

The Board approved the amendment to the Official Plan subject to clarification of the restriction on new development within 100 meters of the landfill site and on new development within 500 meters of the landfill site which has or has the potential for creating additional dwelling units while permitting expansion of existing dwelling units which do not create additional dwelling units or ancillary units.

RELEASE DATE: May 28, 1993

APPLICANT: Curtis and Janice Royal **CH-92-09**

This hearing involves two appeals: by Mr. Garfield Emerson from a decision of the Committee of Adjustment for the Township of Mulmur granting an application by Curtis and Janice Royal for consent to sever the east half of Lot 29, Concession 3, E.H.S. in the Township of Mulmur; and by Garfield Emerson from a decision of the Niagara Escarpment Commission, approving an application by Curtis and Janice Royal for a development permit to construct a single family dwelling, including an attached garage, septic system and driveway on a 0.9 ha proposed lot.

The Board was advised that Mr. Emerson and the Royals reached a settlement of their differences, which would require new applications to be filed.

ISSUES: There were no issues before the Board

DECISION: On the basis of the consent, the appeals were allowed and the application for consent to sever and the development permit were denied.

RELEASE DATE: November 12, 1993

APPLICANT: City of Peterborough **CH-93-01 (F)**
Bensfort Road Landfill Site

The City of Peterborough made an application for a five year interim expansion to permit the continued operation of the Bensfort Road landfill site, the development of a public drop-off area adjacent to the site and a buffer area beyond the boundary of the landfill site.

One application for intervenor funding received by the Board on behalf of Stewart Hall Against Mismanaged Environment (SHAME). The City of Peterborough did not object to being named the Funding Proponent.

ISSUES: There was no issue as to eligibility for funding. Prior to the funding hearing the proponent and the funding applicant agreed on the amount of funding and the process by which funding would be provided.

DECISION: The Funding Panel found that the requirements of s.7 of the *Intervenor Funding Project Act* were met and that the parties adopted the negotiated agreement route for funding openly and willingly and that there was no prejudice to any party.

SHAME was awarded intervenor funding in the amount of \$13,799.00 which was to be provided by placing it in trust with SHAME's solicitor with the requirement that at the conclusion of the hearing an explicit accounting of funds received and how they were subsequently disbursed were to be provided to the Funding Proponent and the funding panel.

RELEASE DATE: August 26, 1993

APPLICANT: City of Peterborough **CH-93-01**
Bensfort Road Landfill Site

The City of Peterborough applied for approval of a five year interim expansion to permit the continued operation of the Bensfort Road landfill site, the development of a public drop-off area adjacent to the site and a buffer area beyond the boundary of the landfill site.

The site has been operating since 1981 and has been under a series of Emergency Certificates of Approval since 1989.

ISSUES: At the pre-hearing settlement conference, negotiations between the parties resulted in a few unresolved issues including minor design details and the progress of the Waste Management Master Plan as it related to the identification of a new landfill site.

A Joint Board hearing began on November 15, 1993 and sat for three days. The Proponent tabled a draft decision which had been reviewed and agreed to by all the parties with one small addition.

DECISION: The Board approved the application along with the related amendments to the Official Plan for The Corporation of the Township of Otonabee, and directed the City of Peterborough, as a participant in the City/County Waste Management Master Plan, to use its best efforts to ensure that an approval and certificate are issued for the long-term waste management system within the life of the new Certificate of Approval.

RELEASE DATE: November 19, 1993

APPLICANT: Dodson Developments Inc. **CH-93-02**

This matter concerned two appeals: by the Niagara Escarpment Commission from a decision of the Regional Municipality of Peel Land Division approving an application to sever land; by Dodson Development Inc. from a decision of the Niagara Escarpment Commission refusing a development permit to construct residential dwellings.

The lands in question were purchased in 1990 and have been used for agricultural purposes.

ISSUES:

Did the consents of the Peel Land Division Committee conform with the Niagara Escarpment Plan requirement that all consents for new lots are to be in conformity with the Food Land Guidelines?

Should the Board take into consideration to the fact that it appears that there are other parcel of lands in the neighbourhood for which consents had been given in the past?

DECISION:

The Board found the lands to be high priority agricultural lands and subject to the Food Land Guidelines requirement that they be severed only when the consent is farm related. The Board found that the consents were not farm related and therefore were not in conformity with the Guidelines or the Niagara Escarpment Plan.

The Board determined that it could not be influenced by Land Division Committee decisions with respect to other lands.

The decisions of the Land Division Committee were set aside and the appeals against the refusal to issue development permits were dismissed.

RELEASE DATE: July 19, 1993

Environmental Assessment Act

APPLICANT:

Ontario Hydro
Ontario Hydro Demand Supply Plan

EA-90-01

In January 1993, Ontario Hydro withdrew its application for approval of its Demand/Supply Plan from consideration under the Environmental Assessment Act. Forty-three parties applied for costs, and a process of costs assessment was established by the Panel. Costs assessments totalling just over \$6 million were made, and final costs orders awarded approximately \$5.68 million to be paid by the proponent to thirty-seven parties. Individual decisions were issued as the assessments were completed and reviewed by the Panel. The process concluded in May 1994.

APPLICANT: Laidlaw Waste System Ltd. **EA-91-01**
Storrington Landfill

Laidlaw Waste Systems Ltd. sought approval of an extension to the Storrington Landfill Site located on lot 18, Concession VII in the Township of Storrington in the County of Frontenac. The decision of the Joint Board on the application was given on March 31, 1993 approving the extension subject to specified terms and conditions.

Applications for costs were filed by Storrington Citizens Against Trash (SCAT) and Mr. Bruce. The matter of costs was dealt with separately from the main decision.

The Proponent agreed to the \$298.23 amount of costs sought by Mr. Bruce. It disputed the amount sought by SCAT.

ISSUES: At issue was the amount of costs to be awarded to SCAT.

DECISION: At the commencement of the hearing for costs, the two parties advised the Board that they had reached a proposed settlement of the costs claim.

The Board reviewed the submissions and considered the issues regarding the costs claim. The Board agreed with the settlement reached between the parties and ordered costs to SCAT in the amount of \$187,768.65 as set out in the settlement.

RELEASE DATE: May 7, 1993

Environmental Protection Act

APPLICANT: City of Guelph **EP-92-02(F)**
Eastview Road Landfill

The corporation of the City of Guelph applied under the *Environmental Protection Act* for an amendment to its Provisional Certificate of Approval to permit the continued operation of its landfill site for an additional five years. The landfill site has been operated by the City since 1962 and is currently operating under an Emergency Certificate of Approval.

On January 12, 1993 an intervenor funding hearing was held at which one intervenor, the Eastview Residents for Environmental Justice (EREJ), applied for funding. The funding hearing was divided into two phases. Funding for phase one was allocated for a review of the city's materials by the intervenor's consultants, a site tour with

city staff and consultants and a series of meetings with the proponent to narrow issues and prepare a joint submission.

ISSUES:

At the second stage funding hearing, the proponent raised the issues of whether the intervenor met the eligibility criteria set out in section 7 of the *IFPA*, whether it had established a record of concern and had demonstrated an interest that was unique or different that would be of assistance to the Board and challenged whether it represented a public rather than a private interest.

DECISION:

The funding panel found that the intervenor met the requirements of the *IFPA*, and that it did have some public interest issues to present. The funding panel declined to award intervenor funding for investigation of issues that would not assist the Board as they either would not provide new information or they would duplicate information presented by other parties. The funding panel awarded funding to the EREJ in the amount of \$29,789.50.

RELEASE DATE: April 26, 1993

APPLICANT:

City of Guelph
Eastview Road Landfill

EP-92-02

The City of Guelph applied for approval to expand the Eastview Road Landfill site for an additional five years. The application was supported by the Director of Approvals of the Ministry of Environment and Energy (MOEE) and two near-by developers. It was opposed by the Eastview Residents for Environmental Justice (EREJ), a local community association.

The parties agreed to a set of conditions which included mitigation, monitoring, reporting, record-keeping, contingencies, institution of a public liaison committee, and a proposal to settle small claims arising from site operations.

EREJ took the position that the application should be refused. Alternatively, EREJ requested that any approval include a condition that the site be permanently closed after the extension period, and that a property value protection plan be included by the Board. The City and the Director opposed these conditions and claimed that the Board lacked jurisdiction under the EPA to include them in its decision.

ISSUES:

Did the Board have the jurisdiction to include in its decision conditions requiring that the site to be permanently closed after the extension period and that a property value protection plan be included by the Board.

DECISION: The Board decided that the City should be permitted to continue to operate the site for five more years, provided that it proceeds on schedule with the selection of a long-term landfill site under the joint Waste Management Master Plan process. It also required an environmental assessment of the new site to be submitted to the MOEE no later than January 1, 1996.

The Board concluded that it did not have the authority to prohibit the issue of emergency certificates in the future.

The Board concluded that it did have the power to direct that the site be permanently closed after the five year extension, and so ordered. It also found that it had the jurisdiction to include a property value protection plan as a condition of approval. The Board decided, however, to require a compensation plan only in the event that the City fails to comply with the schedule for the long-term site, or in the event that any certificate is issued in the future extending the operation of the site beyond the approved five year period.

RELEASE DATE: September 22, 1993

APPLICANT: Township of Faraday **EP-92-03**

Since 1972, the Township of Faraday has been jointly operating a landfill site with the Village of Bancroft. In 1992, the MOEE reviewed the Conditions of Approval and found that the authority was invalid because the inclusion of Bancroft in the service area was not mentioned. An Emergency Certificate of approval was issued and the township has continued to operate the landfill site under this Certificate.

The Township made application to regularize the situation to include the Village of Bancroft in the service area and to get approval for a Revised Operations and Closure Plan which includes increasing the vertical height of the waste mound and the capacity of the site.

ISSUES: The issue before the Board was the development of appropriate Conditions of Approval.

DECISION: The Board considered the site characterization, recycling efforts, tire and scrap metal removal, disposal of household waste, tipping fees. It also heard evidence on the physical setting, bedrock geology and hydrogeology of the site area.

Prior to the hearing the Township and MOEE agreed on proposed Conditions of Approval. These proposed Conditions were accepted by the Board along with the Township's Design and Operation Report.

The Board approved the Certificate of Approval, subject to the Conditions of Approval, for continuous use of the landfill site and change of site area and mound height, with a service area for the Township of Faraday and the Village of Bancroft.

RELEASE DATE: June 9, 1993

APPLICANT: Green Lane Landfill Limited **EP-92-06(F)**

Green Lane Landfill Limited, a division of St. Thomas Sanitary Collection Service Limited, applied for approval of a five year interim expansion of the Green Lane Landfill site located on Part of Lots 21, 22 and 23, Concession III, Township of Southwold, Elgin County.

The site had been operated from June 1978 until September 1991, when it reached capacity. In April 1992, the proponent applied for a certificate of approval under the *Environmental Protection Act* to expand the landfilling operation and to operate over a five-year period.

At the preliminary hearing on January 19, 1993 party status was granted to the City of St. Thomas, Elgin County, the Township of Southwold, Southwold Against Dumping (SAD) and Greta Thompson. SAD and Mrs. Thompson were granted intervenor status under the *IFPA*.

A funding panel was appointed under the *Intervenor Funding Project Act* and requests for intervenor funding were received to a total amount of \$192,653.29.

ISSUES: At issue was the amount of funding to be awarded.

DECISION: The funding panel found that although the proponent was willing to negotiate the matter, SAD had not met with the proponent to attempt to narrow outstanding issues before the hearing. Therefore in the absence of an acceptable and comprehensive agreement between the parties, the funding panel determined that funding would be provided only for work which would be necessarily and reasonably performed and which will assist the board and contribute substantially to the hearing [in accordance with the provisions of sections 7(3)((a) and 7(2)(b) of the *IFPA*]. Intervenor funding was awarded to SAD and to Mrs. Thompson to a total amount of \$89,406.36.

RELEASE DATE: April 6, 1993

APPLICANT: Green Lane Landfill **EP-92-06**

Green Lane Landfill, a division of St. Thomas Sanitary Collection Service applied for approval under the *Environmental Protection Act* (EPA) of a five year interim expansion of the Green Lane Landfill site. Non-designation of the site under the *Environmental Assessment Act* (EAA) had been previously granted by the Minister.

ISSUES: What was the appropriate test of "need" in the application? Was there need for the landfill, were the management requirements met and what was the relation between the interim approval and long term planning for waste management?

DECISION: The Board found that as the site had received non-designation status under the EAA and this was an application under the EPA, consideration of need involved an appraisal of the demand for and the justification of the disposal of wastes in the landfill site; the proponent would be required to ensure that the site had the least possible detrimental impact and that the natural environment was protected and conserved; and the function of the site was to be considered in relation to an evolving waste management system for the service area.

The Board found that there was a need for interim expansion, there was no practical alternative to the proposed site, and that the additional wastes could be disposed of safely. The board granted the approval subject to conditions and management requirements.

RELEASE DATE: July 30, 1993

APPLICANT: Town of Kapuskasing **EP-92-07**

The Corporation of the Town of Kapuskasing made an application under the *Environmental Protection Act* for a five-year expansion of its landfill site located on Part of Lot 29, Concession 17 in the Township of O'Brien. The landfill has been in use since the late 1940's.

The proposed landfill would alter the existing fill area by adding vertical lift and by increasing the lateral extent of the landfill.

The Town has participated up to stage two of the Kapuskasing-Moonbeam Waste Management Master Plan study. As part of the master plan work, a long-term landfill site has been identified but opposition to the site has resulted in the matter being put on hold, resulting in this interim application.

ISSUES: At the preliminary hearing five issues were identified: details on the operations and closure, especially on the clay cap cover, required confirmation; evidence was needed that the extension of the site for five years would not jeopardize the completion of the master plan; the monitoring program had to be detailed; it had to be shown that possible contamination of lower strata by leachate would not occur; and complaint reporting procedures had to be particularized.

Most of these issues were resolved by the parties before the hearing and at the hearing an Agreed Statement of Facts and Expert Opinion were filed. Although there was an agreed statement of facts and expert evidence, because of the public nature of the hearing, the Board heard evidence on how the issues had been dealt with and resolved in order for the Board to make an informed decision as to whether the application should be approved.

DECISION: The Board heard evidence on the operation, closure, cover and final contours of the site; the life span of the site; details of the monitoring program; groundwater guidelines and the complaint reporting procedures. The Board approved the application subject to specified conditions

RELEASE DATE: November 30, 1993

APPLICANT: Town of Lindsay
Lindsay/Ops Landfill **EP-93-02(F)**

The Corporation of the Town of Lindsay applied for an amendment to its Provisional Certificate of Approval to extend the life of the existing Lindsay/Ops Landfill site for a period of five years.

An application from Brian Wilson and Ed Palubiskie (one intervenor) for Intervenor Funding was received by the Board. The Proponent and the intervenor met prior to the date set for the funding hearing. The Proponent advised the Board that a funding agreement had been reached and asked the Board to cancel the funding hearing.

ISSUES: There were no issues to be decided by the funding panel.

DECISION: The funding hearing was cancelled. Intervenor Funding in the amount of \$47,816.16 was awarded to the intervenor.

RELEASE DATE: September 10, 1993

APPLICANT: Town of Lindsay
Lindsay/Ops Landfill

EP-93-02(FAS)

The Corporation of the Town of Lindsay applied for an amendment to its Provisional Certificate of Approval to extend the life of the existing Lindsay/Ops Landfill site for a period of five years.

Brian Wilson and Ed Palubiskie (one intervenor) applied for Intervenor Funding and on September 10, 1993 was awarded \$47,816.16 Intervenor Funding.

The Intervenor requested supplementary funding to cover additional hydrogeological work and to cover the cost of attending issue narrowing meetings prior to the hearing of oral evidence.

ISSUE: What was the appropriate amount of supplementary funding?

DECISION: Supplementary funding was awarded for hydrogeological work and the remaining funds which had been awarded at the original funding hearing were reallocated.

RELEASE DATE: December 23, 1993

APPLICANT: Township of Asphodel
Municipal Landfill Site

EP-93-04

This is an application for a provisional certificate of approval to permit the interim expansion and operation of the existing landfill site for a further five years.

Issues of concern raised at the preliminary hearing were satisfied by the time the full hearing began and at the full hearing there were no parties or participants in opposition to the application. A draft Certificate of Approval was submitted at the full hearing. It was the position of the Board that although there was agreement among the parties the Board continued to be obligated under the EPA to be satisfied that the requirements of the Act were met.

ISSUES: Were the requirements of the EPA met ?

DECISION: The Board considered the terms of the Draft Certificate of Approval and the evidence submitted to it. The Board considered aspects of landfill management including provisions for monitoring environmental impacts, trigger mechanisms and contingency plans and concluded that the site could be operated safely for a period not exceeding five years. The Board approved the application with some amendments to the draft Certificate of Approval.

RELEASE DATE: March 4, 1994

APPLICANT: Town of Kincardine
Valentine Avenue Landfill

EP-93-05

The Township applied under the Environmental Protection Act for an amendment to its Provisional Certificate of Approval to extend the use of its landfill site for a further five years.

The proposed site had been exempted from the operation of the Environmental Assessment Act subject to several conditions.

The only parties at the hearing were the Proponent and the Director of Approvals Branch of the Ministry of Environment and Energy (MOEE). Initially the parties were in agreement but soon a dispute developed over whether the Proponent could seek interim approval for a term of more than five years.

ISSUES: Can the Proponent seek an interim approval for a term of more than five years?

DECISION: The Board considered evidence on the development of a long term waste management policy. It acknowledged the tension between having approval for a term sufficient for the development of the long term policy and encouraging the master planning policy to proceed expeditiously.

The Board granted the approval for a period of the earlier of five years or the date at which operations begin at alternative waste disposal sites in accordance with the master waste management plan. The approval may be extended by the Director of Approvals Branch of the MOEE for a further two years provided that an environmental assessment for the waste disposal component of the master plan was submitted to the MOEE by December 31, 1995 and an alternative waste disposal facility arising out of that plan is not available to receive waste.

RELEASE DATE: March 10, 1994

Ontario Water Resources Act

APPLICANT: Andrew Yantha

OW-92-01

This is an application for approval of the extension of sanitary and water services. The matter was referred to the Board by the Director because the sewage works cross the municipal boundary between the Township of Sherwood, Jones and Burns and the Village of Barry's Bay.

Notice of application was given by the Board. As no objections were received, the Board determined that a hearing was not necessary. Written submissions were sought from the Approvals Branch of the MOEE along with any proposed terms and conditions. The Approvals Branch responded that the technical aspects of the works were satisfactory and attached a draft Certificate of Approval. This was forwarded to the applicant who advised the Board that it had no concerns with respect to the suggested terms and conditions.

The Board approved the application for the extension of sanitary sewers subject to specified terms and conditions.

RELEASE DATE: April 23, 1993

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ENVIRONMENTAL ASSESSMENT BOARD

ANNUAL REPORT 1994-1995



ENVIRONMENTAL ASSESSMENT BOARD

ANNUAL REPORT

1994-1995

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Chair's Message

20 YEARS OF PRESERVING AND PROTECTING ONTARIO'S ENVIRONMENT

This is the 20th anniversary of the Ontario *Environmental Assessment Act*, the legislation which created the Board and also the province's most comprehensive legislation aimed at achieving environmental protection and sustainability. This anniversary offers an opportunity for reflection on how the environmental assessment process is understood, and on how we can continue to improve participation in the hearing process.

We have tried to increase understanding of legislative requirements by several means. One is through the reasons given for individual decisions. Soon we will be publishing a report outlining the development of the board's thinking on the EA process with reference to those individual decisions. Although a board such as ours cannot remain static in its thinking, past decisions help everyone understand the direction being taken.

As an aid to understanding individual decisions as they are released, we now provide a summary with each decision for those who wish to learn only the highlights, or want to understand the nature of the decision before reading the detailed reasoning.

We continue to stress innovation in our approach to individual hearings. Large, complex hearings have different requirements than those which raise limited issues and have a small number of parties. Some of the methods being tried are described later in an article that

uses both EAA and *Environmental Protection Act* hearing examples. The board continues to be successful in encouraging agreements among parties and shortening the length of hearings for interim approvals of existing landfills granted under the EPA. This success is due, in part, to the guidance provided to the parties in written directions from the board. Education and communication are also important in increasing understanding and participation in the decision-

making process.

On the communications front, guidance on the hearing process will be published in a booklet called "Getting Involved". A shorter brochure will also be available. Other more formal documents which set out the procedural directions for each specific hearing are constantly being revised. These provide greater clarity and allow the particular characteristics of each hearing to be accommodated.

We announced last year that a multi-stakeholder advisory committee had been created in 1993 to obtain advice and assistance from people who have direct involvement with the board's process. The twin goals remain improvement of communication between the board and the people it serves and development of procedures which will result in more effective and efficient hearings. We meet regularly and, this past year, have completed work on the board's generic procedural direc-

Education and communication are also important in increasing understanding and participation in the decision making process.

tions and a practice direction on the form, contents, and filing of documents. The committee worked on recommendations for better First Nations participation in the hearing process, and the board followed up with a workshop on that topic. We have also discussed refinements to the intervenor funding process and an improved environmental assessment process. The Committee continues to be a valuable source of views and advice on both fundamental issues and final revisions to practice directions and other process-related documents.

We have introduced a feedback mechanism, which is a simple questionnaire distributed to parties, participants, witnesses and lawyers after particular hearings. The questionnaires are returned to me, and respondents' identities are kept confidential, but the feedback will be used to advise members about the perceptions of participants in their hearings and to develop topics for the board's learning program.

New members have the great advantage of being able to participate in generic hearing/decision-writing training provided by the Society of Ontario Adjudicators and Regulators (SOAR) through in-depth courses. All members can take advantage of the tribunal conference held in November of each year. These agency community initiatives allow the board to concentrate its own efforts more on the specific problems and issues in the adjudication of applications under environmental legislation. The in-house learning program consists of full-day training sessions or workshops and regular meetings to provide opportunities for discussion of various issues. This program is described later in this report.

The board's most important purpose, as expressed in its strategic plan, is to make good decisions for the protection, conservation, and wise management of the environment. We will continue to use both the traditional hearing process and new, creative techniques toward that goal. We are aided in this by amendments to the *Statutory Powers Procedure Act* which authorize pre-hearing steps we have already introduced; provide flexibility by allowing for electronic and written hearings; allow procedural and interlocutory matters to be decided by only one member; and authorize all tribunals to make rules on reconsideration of their own decisions. We are participating in an initiative to provide model rules for all tribunals, and will then use these as the basis for new rules for the board.

On more fundamental process questions, we are looking beyond our hearing mandate to consider whether earlier, or incremental, decisions could make the EA process work better to provide earlier direction for proponents and affected communities.

The goal of this annual report is to show how the board is building on past experience and approaching its business in new ways to achieve its purpose. In increasingly difficult times, we look forward to being a force for constructive change.

Grace Patterson

EMERGING APPROACHES TO ENVIRONMENTAL HEARINGS

For approximately five years, the board has been developing a hearing process that results in less time and lower cost to both participants and the public. This process includes preliminary hearings, parties working with the board to develop agreed-upon procedural directions, pre-hearing settlement conferences to settle issues, facilitation, consultation and negotiations before and during a hearing, and a hearing style that is a blend of investigation and adjudication. It continues to evolve in slightly different ways for different types of hearings.

LANDFILL EAA HEARING: COUNTY OF WEST NORTHUMBERLAND

As part of its waste management master plan, the County of West Northumberland submitted an environmental assessment to the Minister of Environment and Energy for a proposed landfill to be located in the Township of Haldimand, near Cobourg. As several approvals were required, the County gave notice under the *Consolidated Hearings Act* and a joint board was appointed. The board endeavoured to experiment in this case, in the hope that the hearing of evidence would not approach the length and cost of many previous landfill cases under the EAA (e.g., for *Halton* - 194 days, *North Simcoe No. 2* - 108 days, *Meaford* - 104 days and *Steetley South Quarry* - 143 days).

For approximately five years, the board has been developing a hearing process that results in less time and lower cost to both participants and the public.

The process began with a preliminary meeting (August 1994) of all potential parties and participants which board staff attended without the board. Although the EAB's rules provide for preliminary meetings (in contrast to hearings), they have rarely been convened. In this case, the meeting permitted the parties and public to communicate in a more informal fashion to discuss issues of concern with respect to the undertaking, alternative methods of public

involvement in the hearing process, coalition building by prospective parties and participants, and preparation for the preliminary hearing.

At the preliminary hearing (September 1994) the board announced that it would neither schedule a funding hearing under the *Intervenor Funding Project Act* (IFPA) to provide funding for the main hearing, nor set a date for the hearing itself, until it was satisfied that all issues had been satisfactorily focused and narrowly defined. The board's refusal to proceed until issue definition is completed is unprecedented in EAB or joint board cases.

The board advised the parties that its goal was a hearing of evidence which would take under two months (30 hearing days or less) to complete. In order to achieve this result, the board suggested the implementation of measures such as comprehensive pre-filed written evidence and time limits for the direct examination (30 minutes) and cross-examination (90 minutes) of witnesses. No oral evidence would

be presented on background and uncontested matters unless the board requested it. Prior to the selection of a hearing date, a schedule would be prepared recording the time allocated for each witness, site visits, opening and closing submissions by counsel, and all other steps. The board described its concept as follows:

"The hearing will **not** be a process in which everything is examined. The hearing will deal with the critical issues only. Other matters should be left to the written material, or better still, resolved by the parties before the hearing."

The parties were asked to meet and develop more satisfactory issues lists. Since several further reports were forthcoming from the proponent, the continuation of the preliminary was postponed until after their release. At the second preliminary hearing (December 1994) the board gave interim party status only, accepted the parties revised issues solely on a preliminary basis, and scheduled the pre-hearing process (delivery of documents, exchange of interrogatories, meetings of consultants, preparation of detailed issues lists and joint submissions on resolved matters, agreed-upon conditions and issues in dispute).

Board staff were instructed to maintain regular contact with the parties, and to intervene should problems develop. The proponent was directed to file a progress report no later than the end of March 1995. A third preliminary hearing was scheduled for the spring. This periodic continuation of the preliminary hearing process in order to monitor and assess the progress by the parties was another departure by the board from traditional practice.

In consultation with the parties, a voluntary funding process, outside of the formal operation of the IFPA, was instituted for the pre-hearing stages only. A board member was appointed to adjudicate any disputes about funding issues that the parties could not resolve directly through negotiations. A funding hearing was conducted

in January 1995 and the decision was rendered in February.

When conflict developed among some of the parties with respect to the execution of the interrogatory process, a teleconference was conducted by the chair of the EAB. Subsequently, the chair was appointed, under the authority of new amendments to the *Statutory Powers Procedure Act*, to intervene and arbitrate in a summary fashion with respect to any and all interlocutory procedural matters which the parties could not resolve. It was hoped that this appointment would provide the parties with quick access to a decision-maker and thereby keep the pre-hearing process from stalling. Since then, the parties have participated in teleconferences and meetings with her.

The pre-hearing process is continuing.

EPA HEARINGS: THE CITY OF BROCKVILLE LANDFILL

The application was to permit the interim expansion of the City of Brockville's landfill site.

The Brockville case is particularly revealing because it illustrates both the indirect and direct effects of the board's priorities. The indirect influence was evident from the time that Brockville obtained an MOEE exemption from the Environmental Assessment Act ("EAA") in November, 1992 until the first preliminary hearing at the end of March 1994. Some of the applicant's initiatives that anticipated the board's approach were:

- reaching out to the public by the proponent, involving consultation and identification of public concerns
- providing informal intervenor funding in the interest of effective links and negotiation with the affected "neighbours" who later were identified as the "Landowners" party at the hearing, obviating the need for a formal

application by that intervenor under the *Intervenor Funding Project Act*

- starting a serious process, under the guidance of the MOEE, to mitigate the Land-owners' expressed concerns about odour, noise, dust, visual impacts and landfill gas
- implementing a highly proactive 3Rs program which enabled Brockville to meet MOEE's objective of 50% waste diversion approximately seven to eight years ahead of the end-of-century target date (consequently earning the City the "Environmental Achievement Award" from Environment Canada in 1993).

Once the formal hearing process was underway, the board assumed direction of the proceedings. The landmark events were:

For consideration in March 1994 at the preliminary hearing, the board first issued draft directions (Procedural Directions) dealing with the confirmation of parties, the identification of preliminary issues, the exchange of information among the parties, opportunities for negotiation about and addressing the identified issues, and the conduct of the hearing.

At the preliminary hearing the parties agreed that, notwithstanding ongoing discussion and negotiation, twelve issues were still not fully resolved.

The board confirmed (April 1994) three full-time parties (City of Brockville, Ministry of Environment and Energy, and the Land-owners), and the terms of reference for an agreed-upon, second preliminary hearing. The terms of reference called for informal exchanges of information with a view to narrowing issues and for the joint filing of resolved and unresolved issues, and proposed Procedural Directions.

At the second preliminary hearing (June 1994), a revised and much shorter list of unresolved issues was confirmed, and consensus was achieved on procedures and deadlines on information flow, experts' meetings, and other matters. A date was set for the start of the main hearing which allowed time for outstanding issues to be addressed before proceedings resumed. A target of a maximum of 2.5 hearing days was set for the duration of the hearing.

The hearing lasted only a day and a half. The original 12 issues had been reduced to three. One of these was resolved. The remaining two were addressed at the hearing.

The board approved Brockville's application (November 1994), subject to forty-nine conditions that constituted the substance of the Provisional Certificate of Approval.

The Brockville decision shows how the board's process can enhance the efficiency and effectiveness of the hearing process, and arrive at a result which is almost entirely consensual. The City's engineering consultant (Gore & Storrie), noting that the hearing "required only a day and an evening", observed that "considering the circumstances of the site management history, this is a remarkable achievement in a process that, done badly, can drift on for months or years."

Brockville was also noteworthy for the conduct of the hearing. The parties, in response to the advice of the board, agreed to a hearing style and agenda involving: (i) a joint consolidated panel of the specialist witnesses from all parties; (ii) the use of the draft Certificate of Approval (a consensual document) as the framework for the hearing of evidence. As the hearing proceeded through the conditions of approval, counsel and the board called upon the members of the joint panel issue by issue rather than on a party basis to provide the necessary insights. The relevant counsel com-

menced a topic by a brief "examination-in-chief" of the relevant witness, and then questions were raised by the parties (in an agreed order) and by panel members, as required.

As it turned out, the "exercise" proved productive in ensuring that the broad environmental protection purpose of the EPA was covered in full measure by the terms of the Certificate of Approval. As a result of the clause-by-clause review of those conditions, the hearing was instrumental in clarifying, revising or elaborating some key conditions. Those included the fine tuning of conditions on the waste disposal site life; public liaison; the complaints procedure; litter, dust, noise and odour control; sludge lagoons; a landfill contaminant attenuation zone; the closure plan, including the final cover, and the confirmation of an "after-use of conservation and passive recreation".

THE PORT COLBORNE LANDFILL

For a number of years, the board has been encouraging parties to try and settle issues and negotiate terms and conditions that can be attached to a board approval. On a number of occasions, parties have successfully negotiated agreements and presented these to the board.

As a result, in 1994, the board adopted its *Protocol for Consideration of Agreement Among Parties*. The Protocol sets out what constitutes a viable agreement and how the board will respond to an agreement submitted to it.

The Protocol has become one way to shorten the length of hearings by allowing those affected by a proposal to work together and with the proponent to resolve issues before or during the hearing. As well, the Protocol is another example of how the board is using creative mechanisms to achieve its purpose of making good environmental decisions.

One example which shows the importance and usefulness of the Protocol is the hearing of an application for an interim expansion made by the City of Port Colborne for its Elm Street landfill. In the Port Colborne case all issues, including the board's, were resolved in advance of the hearing. This resolution of the issues was reflected in a comprehensive, agreed-upon draft Certificate of Approval.

At the hearing, the board asked for evidence on how the agreement was reached. Being satisfied that the requirements of the Protocol were met, the board, in an oral decision, approved the application subject to the conditions and related schedules in the agreed-upon draft Certificate of Approval. This landfill hearing took just over two hours to complete.

The board now introduces the Protocol to parties at preliminary hearings. However, we urge proponents to consider the requirements of the protocol well in advance of a hearing.

INTERIM WASTE AUTHORITY HEARINGS

INNOVATIVE APPROACHES TO LARGE HEARINGS

In June of 1994, the Interim Waste Authority requested consolidated hearings into their applications for three

separate landfill sites, one in Peel Region, one in Durham Region, and one in York Region. As reported in our last annual report, participant funding in the amount of \$1.7 million dollars was provided to those interested in studying the proposals. Preliminary meetings were held in each of the areas to provide information to the public about the joint board process. In October and November 1994, Preliminary Hearings were held in each of the three sites.

Board staff assisted members of the public in choosing the type of participation most suitable to their concerns, and provided regular written updates to those who wished to be kept informed of the progress of the formal hearing process. In addition, a toll-free information line was established.

At the Preliminary Hearings, potential parties to the various applications filed motions requesting adjournment, direction of the board concerning the appropriateness of certain issues given the statutory context of the hearings, a revision of the notices for the hearings,

and that issues relating to recycling, re-use, and reduction of waste ("the 3R's") for all three sites be heard together. These motions

were heard in December, and the board decided that no adjournments would be granted, issued clarification of the type of evidence to be considered, determined that no revised notice was necessary, and ruled that the 3R's evidence would be heard jointly.

The Preliminary Hearing for the joint first phase for all three sites continued in

February 1995. Issues were identified, and funding applications were distributed. The Preliminary Hearings for the separate site hearings were set for May and June. The Hearing Panel set tight deadlines for the exchange of information on the issues, and directed that clear and concise issue lists would be required before each application could proceed to the funding stage.

[At the date of publication of this annual report, the IWA hearings have been adjourned until further notice, as a result of the change in government, and the need for the IWA to obtain further directions from its Board of Directors.]

Board staff...provided regular written updates to those who wished to be kept informed of the progress of the formal hearing

THE FUNDING OF PUBLIC PARTICIPATION

PAST, PRESENT AND FUTURE INITIATIVES

The *Intervenor Funding Project Act, 1988* (IFPA) came into force on April 1, 1989 as a three-year pilot project. It permitted the granting of intervenor funding in cases before the Environmental Assessment Board (EAB), joint boards and the Ontario Energy Board (OEB). Ontario is the only jurisdiction in Canada with such legislation, which provides funding to intervenors *before and during* a hearing, rather than at the conclusion, when costs can be awarded. Prior to that time, funding had been made available under the authority of Orders-in-Council to intervenors on just a few occasions, in cases involving government proponents. In 1992 the Act was extended by the provincial government until March 1996.

The IFPA authorizes a funding panel (constituted differently from the hearing panel) to designate as the funding proponent the party which will pay the funding which is awarded, usually the proponent of the undertaking, and determine which intervenors (if any) are eligible and how much they should receive. Generally, the award covers a portion of the cost of legal representation and the work of technical consultants. Legal fees can be funded at no more than the very modest rates permitted by the Ontario Legal Aid Plan. No similar restriction applies to the funding of consultants' fees. The Act stipulates that funding may be awarded only with respect to those issues affecting "a significant segment of the public" and involving public, rather than private, interests. An application which passes this test must then be scrutinized in accordance with a number of specified criteria, such as the need for the

representation, a lack of financial resources, an established record of concern and efforts to bring related interests into an umbrella group.

Funding hearings before the EAB and joint boards are conducted without resort to oral evi-

dence from witnesses, in order to minimize the time and costs of the parties. In some cases, the funding panel has conducted the process in two phases, the first to provide an interim award to permit issue scoping and consultation among applicants, and the second to deal with funding for the hearing. In one case now pending, the board is experimenting with phase one

funding intended for the entire pre-hearing process. In the six years since funding became available under the IFPA, a number of principles have emerged from EAB decisions. Space permits only a brief mention of a few of them:

The purpose of funding is to ensure ...a proper inquiry into the issues which must be examined by the hearing panel.

- The purpose of funding is to ensure the adequate representation of those interests which are reasonably necessary for a proper inquiry into the issues which must be examined by the hearing panel.
- The amount of money awarded will not be at a level which necessarily permits a level playing field, funding for all issues and special interests, or an exhaustive examination of the undertaking which leaves no stone unturned.
- In order to ensure that duplication of effort is scrupulously avoided, the funding panel will inquire into the issues to be addressed, and evidence to be called, by all other parties, including those which are not seeking funding.

- The existence of different perspectives or potential (rather than actual) conflicts between intervenors, will not necessarily result in separate funding for each of them.
- Funding should not be awarded solely to help educate an applicant about the relevant issues.
- The amount of funding will not necessarily differ depending upon whether a proponent is in the private or public sectors.
- The potential profitability of the undertaking, or the financial strength of the proponent, is not a valid reason for increasing the amount of funding.
- Large public bodies such as municipalities and provincial agencies ought to be able to finance their own interventions without any intervenor funding.
- A public body should not seek funding if intervention in hearings is part of its normal regulatory activity.
- As between public bodies and residents' groups, the IFPA was primarily intended to benefit the latter, as they generally have small budgets and little or no other access to public funds.
- Generally, funding ought to be awarded only for a review of the proponent's work, rather than for original or field work conducted by the intervenor.
- An applicant must make a financial contribution in some form towards the cost of its intervention.

At the same time, there also exist funding issues which have not been resolved to the same extent as those principles identified above. For example, an issue which has received discussion in two funding decisions

rendered during the past year involves a concern held by some that professional advisors (lawyers and consultants) have taken from their clients control over and involvement in the process. This is related to the question of whether funding should be granted for members of an intervenor group who perform consulting services in-house, not as volunteers, but at lower than market rates. Although local grass-roots, non-professional advisors and representatives may be available at a substantially reduced cost (the impact of expensive interventions on recession-weary proponents has received considerable attention in the media, and at hearings), will such a team be sufficiently experienced, and will the intervention be effective?

Another contemporary issue requiring more analysis involves the tension between local neighbourhood groups and interest groups with a wider geographic base (and more broadly-based public interest concerns) in the competition over available funding.

Commencing in 1992, the EAB has made a number of "participant" funding decisions. This funding is made available voluntarily by a proponent (and pursuant to an Order-in-Council) before the commencement of the hearing process and referral of the undertaking to the board. Many proponents have chosen to make participant funding available for document review and consultation in recognition of the widely-held view that funding can be more effective if provided earlier in the process. Generally, a funding panel under the IFPA can take into account participant funding previously awarded. Later in the process, a hearing panel can award supplementary funding under the IFPA to a party granted intervenor funding if there has been a change in circumstances requiring additional assistance. At the end of the hearing process, when costs are sought by an intervenor, both participant and intervenor funding are taken into account.

The EAB's 1990 Annual Report stated that "intervenor funding contributes to effective participation and thus better decision-making" because "the issues are better delineated and the evidence more balanced" (p.17). Five years later, this continues to be the view of the board. In 1992, we recommended to the government that permanent funding legislation be enacted. The EAB's Advisory Committee, comprised of several indi-

viduals who work with stakeholders appearing before the board, is undertaking a public consultation process in order to gather together a body of opinions about the current state of intervenor funding under the IFPA and recommendations for the future. A report is expected in the fall of 1995. In many respects, the coming year may prove to be a watershed for intervenor funding in this province.

THE BOARD'S LEARNING PROGRAM

TRAINING BOARD MEMBERS FOR TODAY & TOMORROW

During the past year, the board pursued the Strategic Plan goal of continuous learning. The design of the program responded to three types of learning needs:

Procedural/Technical - for example, the conduct and dynamics of hearings governed by different legislation, such as the *Environmental Protection Act* compared to the *Consolidated Hearings Act*;

Environmental issues - for example, matters related to the board's mandate, such as current concepts of ecology, and provincial initiatives: policy statements on heritage, conservation and wetlands;

Process issues - for example, the decision writing process, and the exploration of alternative hearing styles, investigative as well as adjudicative.

These needs have been pursued mainly through a series of workshops and bi-weekly seminars. Highlights among the workshop themes in this period were "Ecological Approaches to Planning and Decision Making", and "First Nations in the Hearing Process".

In each case, the board had the benefit of the participation of a broad cross-section of key actors, serving to bring into focus compelling realities and emerging issues and forces. Some of the responses to the feedback survey on the First Nations workshop illustrate the learning potential of the workshops. One participant observed that "the whole day was very helpful to someone who appears in hearings either

In each case, the Board had the benefit of the participation of a broad cross-section of key actors, serving to bring into focus compelling realities and emerging issues and forces.

with representatives from the First Nations or with counsel acting on behalf of First Nations - from the point of view of understanding their background and therefore their perspective on issues and the constraints they face in terms of decision-making, resource constraints, and particular funding needs." A recently appointed board member responded: "The meeting provided me a unique opportunity for a basic understanding with regard to sensitivities of First Nations in a hearing process. The format was good, and, given the time frame, covered a variety of viewpoints and First Nations organizations from various knowledgeable speakers."

The 1994-95 seminar series encompassed a wide range of issues and learning needs. Topics fell into four broad umbrella themes:

- Retrospective evaluation of ongoing concerns like monitoring the implementation of the board's decisions, and effective public consultation;
- Dialogue on board's decisions with a view to identifying underlying principles, consistencies and inconsistencies, and novel findings or insights with implications for future decisions.
- Evolving provincial policies and legislative changes affecting the context of the board's work, such as 3Rs regulations (MOEE), and

amendments to the *Statutory Powers Procedure Act* and the *Planning Act*.

- Innovative Processes such as mediation and all forms of facilitation, and the adaptation of the hearing process in the interest of greater efficiency, economy, and effectiveness.

The Learning Program has attained a considerable momentum. Included in the unfolding program are workshops on "Decision writing: Objectives, Audiences, Style and Substance, and Process" (April 6, 1995), and "Mediation: from Concept to Practice in the board's Process" (June

22, 1995). Both of these feature a practical, applied approach.

In prospect, are workshops on "Hydrogeology: The State-of-the-Art", and on "Scientific Evidence in board Hearings". Also planned are a sequence of nineteen seminar presentations/discussions/field trips ranging from patterns of environmental assessment legislation across Canada, rules of evidence, service equity, and the review of the board's practices and procedures.

MEMBERSHIP CHANGES

RETIRING MEMBERS LEAVE A LEGACY OF THOUGHTFUL AND ARTICULATE DECISIONS

Two of the board's most experienced members retired this year. In August of 1994 Mary Munro retired. Mary's dedication and hard work provided a sterling example for all of us. Barbara Doherty retired in November. Both Mary and Barbara leave a legacy of thoughtful and articulate decisions.

Linda Pugsley and David Evans, part-time members of the board, became full-time Vice-Chairs, allowing the board to benefit from their experience. Both had been extensively involved in the

board's work during their time as part-time members.

Retirements of part-time members Kate Davies and Robert Edwards, both of whom contributed generously of their expertise and experience, added to the number of vacancies in our part-time membership. Several new appointments were made in the past year, allowing us to recognize the importance of diverse perspectives, backgrounds and communities. Biographies of these new members, Keith Lewis, Mark Dockstator, Om Bhargava and Myron Humeniuk, are included on pages 15 and 16.

JIM KINGHAM

- joined the board in 1987
- involved in environmental work for 25 years as a scientist, negotiator and manager
- developed the Canadian Ocean Dumping Control Bill, negotiated certain marine environmental protection and technology issues associated with the Law of Sea
- chaired a standing Working Group of the U.N. Maritime Organization
- developed a federal Environmental Emergency Prevention Program and strategic plans for the clean up of the Great Lakes and for the work of the Environmental Protection Service
- previously Regional Director-General for the Ontario Region of Environment Canada and Canadian Chairman of the IJC Water Quality Board

ANNE KOVEN

- appointed to the board in April 1987
- Master's degree in Public Administration from Queen's University
- former Research Director of the Upper Ottawa Landfill Site Study, commissioned by the Ministry of Health
- experience in the mining industry and with the Ontario Advisory Council on Occupational Health and Safety

ALAN D. LEVY

- appointed to the board in May 1990
- B.A. and LL.B. from the University of Toronto
- practiced law in the area of litigation, appearing before both courts and tribunals
- one of the founders of the Canadian Environmental Law Association, and a member of its board for 20 years
- cross-appointed as a member of the Ontario Environmental Appeal Board and a Niagara Escarpment Hearing Officer

ELIE W. MARTEL

- appointed to the board in March 1988
- formerly a teacher and an elementary school principal, prior to his election to the Legislative Assembly in 1967
- served as the NDP member for Sudbury East from 1967 to 1987, and as House Leader for his party from 1978 to 1985
- author of two major reports on health and safety in the workplace

LINDA PUGSLEY

- joined the board as a part-time member in July 1992 and became a full-time Vice Chair in September 1994
- background in nursing and citizen participation
- served as Alderman on Burlington City Council from 1978 to 1992, where she concentrated on planning and development, strategic planning, environmental management, and administration and finance

BOARD MEMBER BIOGRAPHIES

FULL-TIME VICE CHAIRS

GRACE PATTERSON - BOARD CHAIR

- Board Chair since February 1990
- joined the board as Vice Chair in 1986
- previously practiced environmental law with the Canadian Environmental Law Association
- served on the Science Advisory Board of the International Joint Commission and on the Canadian Environmental Assessment Research Council
- was a special lecturer in environmental law, Queen's University Law School

DAVID EVANS

- appointed in July 1992 as a part-time member and became a full-time Vice Chair in November 1994
- experienced environmental mediator, facilitator and trainer, who has spoken widely on issues related to public consultation and community affairs
- former mediation and advocacy consultant
- Niagara Escarpment Hearing Officer since July 1992
- former Manager, Community Affairs, Ontario Ministry of the Environment, responsible for supporting the implementation of the Ministry policy on public consultation including developing consultation training materials for Ministry staff
- Bachelor of Arts (Anthropology) from McMaster University and Master of Arts (Sociological Anthropology) from University of Calgary

LEN GERTLER

- appointed to the board May 1990
- Distinguished Professor Emeritus, University of Waterloo, and a Fellow of the Canadian Institute of Planners
- combines an interest in planning, development, and environmental management in both an urban and regional context in Canada and abroad
- foreign assignments include work in Southeast Asia and the Caribbean for United Nations agencies and CIDA
- author and editor of several books on environmental and planning issues
- cross-appointed to the Ontario Environmental Appeal Board and Niagara Escarpment Hearing Office

- served on the Municipal Advisory Committee of the Niagara Escarpment Commission, Five -Year Review

Jim Robb

- appointed to the board in 1990
- degrees in Science and Forestry and a Commercial Pilot License
- previously owned and operated an urban tree care business
- past Chairman of Save the Rouge Valley System, and worked on watershed conservation issues
- has written for various publications; his photographic credits include the cover of the Crombie Royal Commission Report, *Watershed*

PART-TIME MEMBERS

OM BHARGAVA

- appointed to the board in January 1995
- president of Omtek Inc., which provides consulting services in the fields of Analytical Chemistry and Pollution Prevention and Treatment Technologies
- 28 years experience with Stelco Inc., where he was the Supervisor of Corporate Analytical Chemistry
- senior research scientist under contract at the Waste Water Technology Centre (Environment Canada)
- provided expertise to the international steel community, including the International Standards Organization and the American Society for Testing Materials
- author of numerous technical publications, including a recent major environmental report on "Waste Management and Pollution Prevention Opportunities in the Iron & Steel Industry"
- leader of twelve overseas Canadian delegations to the International Standards Organization committee meetings
- Fellow of the Chemical Institute of Canada and ASTM

MARK DOCKSTATOR

- appointed to the board in 1994
- doctorate in law from Osgoode Hall Law School and a B.Sc. from University of Waterloo
- expert on aboriginal rights
- President of the Aboriginal Research Institute
- mediator for the Indian Claims Commission, and has performed various roles for the Royal Commission on Indian Land Claims
- taught part-time at the Faculty of Environmental Studies at York University

JOHN W. DUNCANSON

- became a Hearing Officer under the *Niagara Escarpment Planning and Development Act* in 1975, and was cross appointed to the board in 1991
- B.A. and Business Certificate from the University of Toronto
- formerly employed with Bell Telephone Company
- former Director of the Department of Alumni Affairs at the University of Toronto

MYRON HUMENIUK

- appointed in 1995
- B.Sc. in Environmental Sciences in 1975 and M.Sc. in Fisheries Ecology in 1980, from the University of Toronto
- 20 years of experience in environmental management
- participated in over 60 environmental impact assessment projects
- worked internationally in countries such as France, Greece, India, Mexico, Pakistan and the United States
- active member of the American Fisheries Society; currently Secretary-Treasurer of the International Fisheries Section and President-elect of the Native Peoples' Fisheries Section
- serves as a member of the steering committee of the First World Fisheries Congress, and co-editor of the proceedings

KEITH LEWIS

- appointed in 1992
- currently Director of Environmental Programs for the North Shore Tribal Council in Blind River, and a member of the Band Council of the Serpent River First Nation
- participated in environmental assessment hearings at both the federal and provincial levels on behalf of groups like the Union of Ontario Indians and North Shore Tribal Council
- provided advisory and advocacy services to both the Union of Ontario Indians and the Chiefs of Ontario
- provides services in the area of public consultation, management, and administration to the North Shore Tribal Council and others

JOHN MCCLELLAN

- appointed Hearing Officer under the *Niagara Escarpment Planning and Development Act* in 1989 and cross-appointed to the board in 1991
- geographer, involved in land use matters for 35 years
- former Executive Director of the Prince Edward Island Land Use Commission

STAFF ROLES AND INITIATIVES

EVOLVING ROLES OF BOARD STAFF

This past fiscal year has seen many changes. Jim Curren, our Board Secretary, took up a secondment opportunity with the Tribunals Office, our Deputy Board Secretary, Laura Reilly, has been on leave for part of the year, and two of our secretarial staff are on secondment opportunities. In the same time frame, we have filled the positions of financial officer, records officer, and systems officer on permanent bases, with Howard Douglas, Marlene Mills, and Naren Ariarajah respectively. We have also enjoyed the wise counsel of Kathleen Beall, for both IWA related matters and legal questions in general, and, on a part-time basis, that of Mario Faieta, who also assists the Environmental Appeal Board and the Environmental Compensation Corporation. Ayumi Bailly proved an excellent choice as Acting Board Secretary, while Janet Martell helped fill the gaps in every area, with her customary efficiency.

In times of fiscal restraint, staff have been creative and dedicated in providing improved service to board members and the public, faster and more effective production of board documents and records, and improved communications with parties to our hearings and the public in general.

Niagara Escarpment Hearing Office matters have been streamlined, and are handled by Evelyn Pelletier and Eva Gerold, who also act as assistants for other Board hearings. Madeleine Caron provides courteous and effective receptionist services, while Darla Day, Ruth McCullough, Michael Crawford and Claudia Beaudet provide efficient secretarial and clerical services. Suzanne Vaillancourt, Secretary to the Chair, trained as our in-house desktop

publisher, and used this new skill to produce this report.

In the complex hearing processes related to the Interim Waste Authority applications, new public information processes have been developed to provide timely and clear information

to all of those so vitally interested in the progress of these highly controversial matters. Staff also developed proposals for the board's Strategic Planning session, and will be providing training and assistance to board members in administrative matters, to ensure that such matters are well understood by board

members, and that we can provide the best and most effective help to them in their work.

On the technical side, members and staff are moving into a Windows environment, involving upgraded equipment and extensive user training. A new correspondence tracking system has been installed to track and manage incoming hearing related documents and other reports, minutes, and files. An automated fax server system allows cost-effective facsimile transmission and receipt, with reduced paper use and significant time savings. Remote access to the board's computer system has been developed to allow access to those at remote hearing sites, and to permit board members to work on their decisions and other documents from their homes. Our expanded Local Area Network provides a connection with the Environmental Compensation Corporation computers, enabling sharing of staff resources and equipment.

An updated organizational chart appears on page 32.

In times of fiscal restraint, staff have been creative and dedicated in providing improved service...

Decision Summaries

Fiscal Year 1994 - 1995

APPLICANT: The Ontario Waste Management Corporation (OWMC)

The Ontario Waste Management Corporation (OWMC) applied for approval of a hazardous waste treatment and disposal facility consisting of a physical/chemical treatment plant, an incineration system, an evaporator for liquid residue disposal and a solidification plant and landfill for solid residue disposal.

ISSUES: Early in its assessment process, the OWMC compared the options of landfilling chloride-bearing solid residues against the option of disposing of them in salt mines. OWMC determined then, for financial reasons, that landfilling was preferred. Later in its assessment process, OWMC determined that it would be necessary to pretreat solid residues to remove chlorides before landfilling, and the landfilling cost became much greater than expected.

DECISION: The Board found that there were compelling policy reasons for a publicly-owned and operated hazardous waste management system. However, once the OWMC determined the cost of its revised solid residue disposal option was much greater than originally calculated, its failure to re-visit the earlier decision, which chose landfilling over disposal in a salt mine, was fatal to the assessment process. The Board, therefore, rejected the environmental assessment and thus rejected the application.

RELEASED: November 23, 1994 [CH-87-02]

APPEAL: The Board's decision was appealed to Cabinet; the decision was upheld.

APPLICANT: North Simcoe Landfill

On February 2, 1995 a Joint Board approved an application from the County of Simcoe (successor to the North Simcoe Waste Management Association) for a sanitary landfill site to be located at site 41 in the Township of Tiny.

This decision has a long history. In 1989 a Joint Board dismissed this application on the basis of a flawed site selection process that had not considered certain geographic areas. This Joint Board also found that the proponent's site comparison process was flawed, given that there was a lack of information regarding the impact of the proposed site on the local farm community, and that the proponent had not given enough weight to agriculture in its site comparison process.

On appeal, the Lieutenant Governor in Council issued an Order-in-Council in June 1990, in substitution for the Joint Board's decision, which adjourned the hearing and allowed the proponent to present further evidence to address the Board's concerns.

ISSUES: The second phase of this hearing resumed in May 1993, and concluded in November 1994. The Board heard evidence relating to site selection and site comparison.

DECISION: In February 1995, the Joint Board, relying upon further site selection work performed by the proponent and an amended site comparison process, accepted the proponent's environmental assessment and approved this undertaking.

RELEASED: February 2, 1995 [CH-87-03]

APPLICANT: **County of Lambton**

The Corporation of the County of Lambton applied, under the *Environmental Protection Act*, for approval to expand its Sarnia Landfill and continue its operation for a five-year period. As well, Lambton applied for amendments to the Official Plan, and the Zoning By-law of the former Town of Clearwater. The Joint Board conducted a hearing in Sarnia in April 1994.

ISSUES: A number of issues were raised including the central issue of the five-year extension beyond twenty years of continuous landfilling operations, a limitation on the period of any continued landfill operations, and enhancement of waste diversion through 3Rs. By the end of the hearings, the parties had successfully resolved all issues in contention. A mechanism was developed to eliminate the proposed sensitivity zone, provide a property value protection plan, and ensure permanent closure after the five-year extension.

DECISION: The Board approved the application. Among the conditions of approval, the Board required the proponent to maximize diversion of material from the landfill through 3Rs activities, and to test leachate sludge. The parties agreed to all amendments to the Official Plan and Zoning By-law, and the contents of the site plan and site plan agreement. [CH-90-12]

APPLICANT: **City of Vaughan, Proposed Senior Citizens' Residence and Community & Cultural Centre**

The application before the Board involved a mixed use development, featuring a senior citizens' residence, on a site which is presently forested with a mix of hardwood species. The other main land use in the area is the United Parcel Service (UPS).

ISSUES: The UPS expressed concern over compatibility of their operations, which involved considerable trucking activity, with the proposal. UPS foresaw possible residents' complaints and possible prosecution of the company under the City of Vaughan Noise By-Law.

DECISION: The Board, through invoking the general provisions and powers of the *Planning Act*, prescribed a set of mechanisms that will, on the one hand, facilitate a mixed use development with the senior citizens' residence as its core use; and, on the other hand, prohibit general residential development. These mechanisms include amendments to both the Official Plan and Zoning by-laws of the City of Vaughan.

The Official Plan amendment:

- changes the land use designation on the subject lands from "Public Open Space and Buffer Area" to "Medium Density Residential";
- confines permitted uses to 150 senior citizen's dwelling units, a nun's residence, and ancillary institutional, cultural, religious and commercial uses;
- redefines "senior citizen dwelling" to acknowledge that not every member of a senior household will have attained the age of sixty;
- prescribes a "Medium Density" limit to residential building;
- requires the fulfillment of the measure on noise mitigation recommended by the Noise Impact Study, of the proponent's consultant acoustical engineer.

The Zoning By-law amendment:

- changes the zoning on the Subject lands from PB1 Parkway Belt Open Space and Buffer Area and M1 Restricted Industrial Zone to RA2 Apartment and Residential Zone;
- specifies the permitted uses and floor areas, and for residences, the number and size of units for each of three Building Envelope Areas, forming a single integrated unit;
- introduces a holding provision that zones the Subject Lands as "RH" Residential Holding to ensure that the features of the design are carried out in an integrated manner.

RELEASED: September 24, 1994 [CH-94-01]

APPEAL: The Board's Decision was appealed to the Lieutenant General in Council on October 19, 1994. On January 29, 1995, Cabinet upheld the decision with some clarification of the conditions relating to the zoning amendments.

APPLICANT: County of Victoria - Town of Lindsay Landfill Site

The Town of Lindsay applied to expand the capacity of its existing landfill site to satisfy the needs of the Town of Lindsay, the Township of Ops and the Village of Omemee for the next five years, or until a long-term site has been established, whichever is earlier.

ISSUES: One of the major issues was the future inevitable leachate contamination of the aquifers, from the existing site. Another major concern was the possible contamination of the wetland and the Scugog River which lie next to the Lindsay sewage treatment lagoons. Residents of the area and the MOEE were concerned that the additional leachate from the new collector system might not be adequately treated by the system. When the hearing of evidence began in January, most of the issues had been resolved.

DECISION: During the three-day hearing, the parties agreed on Conditions of Approval meeting the concerns of the MOEE and residents of the area. The Board approved the application subject to a number of additional Conditions of Approval, including extensive monitoring and the redesign of the leachate management systems. The Board also requested the establishment of a "hot line" for complaints, given the evidence provided by local residents of poor maintenance of the existing site.

RELEASED: May 16, 1994 [EP-93-02]

APPLICANT: Robert Young Sod Farms Limited

The applicant applied for approval of lagoons to accommodate sludges (sewage sludge and beet waste) for transfer to organic soil conditioning sites.

ISSUES: Local residents viewed odour as a major potential problem, along with potential surface and groundwater problems.

DECISION: The Board approved the application. Evidence from a Ministry of Environment and Energy air emissions expert convinced the Board that odours could be prevented or, if necessary, mitigated. Daily odour monitoring is required on site. The applicants will be required to meet conditions imposed under a certificate of approval. The conditions limit sludge quantities to be stored on-site;

require monitoring of odours and to identify changes in water quality; limit the time and locations of sludge applications on fields; and provide for site security and inspection, maintenance and record keeping.

The lagoons would prevent the sludge from escaping to either surface or groundwater. Also, the Board considered lagoons to be different from landfill sites since lagoons can be emptied each year and inspected for cracks, fissures or leakage.

RELEASED: November 9, 1994 [EP-93-06]

APPEAL: This approval was appealed to Cabinet on December 7, 1994. The decision of Cabinet has not yet been issued.

APPLICANT: **The Regional Municipality of Sudbury**

The applicant applied for a Certificate of Approval to expand the capacity of its landfill and continue operations over a five-year period. The application also included expansion of its service area, on an emergency basis, from the City of Sudbury to the entire Region.

ISSUES: The Co-op/Non-profit Recycling Action Committee (CNPRAC) raised two issues for decision by the Board. It sought to have a requirement for blue box collection from co-op and non-profit residential buildings included as an additional condition. The other requirement sought was to have the proponent undertake a public education waste reduction and diversion program. The Region and Director took the position that the Board was precluded from adding these conditions since these two issues were covered by regulation 101/94, which is to come into force in Sudbury in July 1996.

DECISION: The Board approved the application, ruling that if was not precluded from adding these conditions. The disputed conditions were imposed, in addition to others, requiring the Region to make all reasonable efforts to implement additional waste reduction and diversion programs and the expansion of existing ones, make its best efforts to meet the provincial waste diversion objectives as soon as possible, impose a ban on the disposal of any material included in the municipal blue box program at the Sudbury landfill, clean up waste littering the western portion and boundary of the site, and repair or decommission any monitoring wells that were damaged or not in use.

The decision also includes several recommendations dealing with matters such as household hazardous wastes, backyard composting, and user-pay systems of waste collection, among others.

RELEASED: August 31, 1994 [EP-93-07]

APPEAL: Several of the conditions were appealed to Divisional Court on September 29, 1994. The appeal has not yet been heard by the court.

APPLICANT: Township of Clarence

The Township applied for a five-year interim expansion of the Clarence landfill site, permitting only domestic, commercial and non-hazardous solid waste. An emergency Certificate of Approval had been granted on December 13, 1991. The Township then made an application for an interim expansion on July 31, 1992.

ISSUES: At a preliminary hearing, the Board identified eleven issues of concern to be explored at the hearing. Among these were; hydrogeology; contaminant migration; monitoring; waste verification procedures; the hazardous waste material diversion; and, the impact of this interim expansion on Township plans to provide long-term waste management services.

DECISION: The Board approved the application subject to conditions which include the requirement for the proponent to provide an annual waste management report. The Board was satisfied with the parties' suggestion that the report should be used to educate the public with respect to keeping hazardous wastes out of the waste stream and encouraging composting both on an individual and collective basis. The Board heard evidence that waste management initiatives will include a used oil depot and a refrigerant recovery plan as well as educational material on the diversion of other hazardous wastes away from the landfill.

The Township commits to taking every possible step to ensure that infractions of the illegal dumping by-law be enforced in a way which will make citizens aware of their responsibilities for proper waste disposal.

RELEASED: May 18, 1994 [EP-93-08]

APPLICANT: Brockville Landfill Site

In order to meet its requirements for solid waste disposal, the City of Brockville sought approval from the MOEE for the expansion and continued use of its existing landfill site for approximately five years.

ISSUES: The Board considered the key aspects of landfill management, including the monitoring and control of environmental impacts related to groundwater, surface water, and landfill gas, as well as landfill options.

DECISION: The application was approved, subject to conditions of approval which were finalized during the hearing.
A high degree of consensus had been achieved by the start of the hearing. In response to the advice of the Board, the parties agreed to a hearing style involving the use of a joint panel of all the specialist witnesses. The agenda used the draft Certificate of Approval as the framework for hearing evidence, enabling a focus on matters of contention, while mounting an inclusive review of the conditions of approval. Including the preliminary hearing, the process involved four hearing sitting days.

RELEASED: November 8, 1994 [EP-93-10]

APPLICANT: Alice and Fraser Landfill Site

The Township of Alice and Fraser applied for a five-year expansion of its existing landfill site for the disposal of domestic, commercial and non-hazardous solid industrial wastes.

ISSUES: At the preliminary hearing on the Township's application, both parties stated that the outstanding issues related to daily and final cover material and sewage works approvals could be worked out before the hearing. Prior to resumption of the hearing, the Board received "An Agreed Statement of Facts" indicating that there were no unresolved issues between the parties. At the hearing, the Board conducted a comprehensive review of the draft Certificate of Approval resulting in consensual changes to a number of conditions including those relating to landfill gas and remedial works, the Closure Plan, complaints procedure and public liaison. Including the preliminary hearing, the process required three hearing sitting days.

DECISION: The Board approved the Township's application, subject to thirty-four conditions in the Provisional Certificate of Approval.

RELEASED: November 16, 1994 [EP-94-01]

APPLICANT: Steetley - South Quarry Landfill

Steetley, now operating under the name of Redland Quarry Products Inc., submitted various applications under the *Consolidated Hearings Act* to obtain approval for its proposal to rehabilitate the South Quarry, located in the Town of Flamborough, by landfilling with solid, non-hazardous waste. The quarry is approximately 200 acres, and would accommodate 26 million tons of non-hazardous waste.

ISSUES:

Intervenors challenged the adequacy of the proponent's environmental assessment planning process and information. Issues were also raised about the potential for the landfill to impose adverse effects on the local community, local water resources and the natural environment.

Within several hundred metres of the South Quarry property, there are approximately ninety homes, three schools and a number of farms and businesses. Municipal water service is not available in the local area and groundwater aquifers are relied upon for drinking water supplies and other domestic uses. In addition, groundwater discharges to local streams and springs along the nearby Niagara Escarpment.

DECISION:

The Board did not accept the environmental assessment and did not approve the undertaking. The Board considered the requirements for an environmental assessment set out in the Environmental Assessment Act, and the proponent's environmental assessment planning process. It determined that the rationale for the undertaking was not adequately established, that the assumed need was unrealistic, that alternatives to the undertaking and alternative methods of carrying out the undertaking were inadequately addressed, and that the environmental assessment process was not "rational, traceable and consistent". The Board also found that the proponent failed to include the community from the earliest stages of the project in a meaningful consultation process that would have allowed input into the planning process and provided an opportunity to the public to influence the proponent's decision-making process.

The Board reviewed the technical aspects of the proposal in detail. The landfill design proposed a low permeability double composite liner beneath the waste, two separate leachate collection systems, a leachate pre-treatment plant, a stress relief/groundwater management system, systems for surface water management and gas collection and combustion, and noise, dust and traffic control systems. The Board considered the potential impacts of the proposal on groundwater, surface water, and the natural environment, reviewed predicted impacts of landfill gas, dust, noise, traffic, and gulls, and made findings on visual impact, land use and planning considerations, and predicted social and economic impacts.

The Board concluded that the location of a 26 million tonne landfill within the fractured bedrock of the South Quarry would pose an unacceptable risk to local groundwater and surface water resources. In particular, it found that impacts to the natural environment were not satisfactorily addressed, that off-site impacts could not be discounted, that the proponent did not reliably demonstrate that hydraulic containment could be maintained in the landfill site throughout the potentially centuries-long contaminating life span of the site, and that the issue of treatment and disposal of leachate required further study. According to the Board, landfilling operations could dramatically change the character of the area surrounding the Quarry, and residents within surrounding communities would suffer continuing and further social impacts.

RELEASED: March 17, 1995 [CH-91-08]

APPEAL: This decision was appealed to Cabinet on April 13, 1995.

APPLICANT: **Timber Management** [EA-87-02]

This was a far-reaching decision affecting future timber management planning on Crown lands in the Boreal and Great Lakes-St. Lawrence Forest regions of Ontario. Due to its importance, this decision, issued April 20, 1994, was included in last year's annual report for timely reporting purposes. The following condensed summary includes the highlights of the more comprehensive review in the prior report.

The EAB approved the undertaking of timber management planning by the Ministry of Natural Resources, subject to terms and conditions intended to expand community involvement in forestry decisions, protect the diversity of the public forests and sustain an industry vital to the province's prosperity.

The decision addressed a number of critical issues:

Clearcutting: Clearcutting requires conditions appropriate for the boreal forest, and striking the right balance between public concerns (destruction of non-production forest values) and the need for regeneration (periodic clearing for growth of conifer species) in unshaded surroundings.

Pesticides: The Board concluded that chemical insecticide is not essential to insect pest management in Ontario's forests. The decision supports MNR's current practice which permits aerial spraying of biological agents, but not of chemical insecticides, except in extraordinary circumstances when no biological alternative is available.

Conservation of biodiversity of Ontario's forests: The Panel ordered several conditions including landscape management methodologies and expansion of the province's existing "featured species" policy to protect habitat for most existing vertebrate species.

First Nations and Aboriginal communities: The Board's decision included conditions requiring MNR to negotiate with First Nations through a special Native Consultation Process in timber management planning.

APPLICANT: **Glenridge Quarry Landfill - City of St. Catharines**

By Order In Council, the Government of Ontario requested that the Environmental Assessment Board provide a member to act as a Funding Panel to determine the distribution of participant funding provided by the City of St. Catharines.

At a July 19, 1994 public meeting, the City of St. Catharines and the Glenridge Landfill Citizens' Committee were offered a number of options, but chose to self-negotiate an agreement on distribution of funds, calling upon the Funding Panel to deal with any outstanding issues. A self-negotiated agreement between the City of St. Catharines and the Glenridge Landfill Citizens' Committee was signed by the parties and, along with a detailed work plan, was submitted to the funding panel for review on September 19, 1994.

DECISION: The Funding Panel decision, accepting the agreement as submitted, was issued on September 20, 1994. [OC-94-02(F)]

APPLICANT: Robert Young Sod Farms Limited (Funding)

The Environmental Hazards Team for the Great Lakes Inc. (EHT) applied for intervenor funding in order to prepare for and attend at the hearing. The proponent advised the panel, in advance of the hearing, that it objected to being named funding proponent and disputed EHT's entitlement to any intervenor funding.

ISSUES: This application raised a difficult question with respect to the type of intervention which is most appropriate. EHT chose to avoid the more expensive route of retaining legal counsel and professional consultants. It was argued that EHT's team would therefore be ineffective. On the other hand, the intervenor would be represented through a local effort at a relatively modest cost. This debate will require further exploration in future funding decisions.

DECISION: Robert Young Sod Farms Limited was named the funding proponent. Intervenor funding was awarded to EHT, as intervenor and representative of the coalition of community members. The award of funding, issued May 20, 1994 was intended to take EHT through the entire hearing. [EP-93-06(F)]

APPLICANT: County of Northumberland (Funding)

This was a funding adjudication agreed to by the potential parties to the application. Formal funding under the IFPA was not yet available as parties to the hearing had not yet been formally identified. The hearing panel wished to narrow issues as much as possible before granting party status. The parties agreed that a funding adjudicator would be appointed to award funding at this early stage of the proceeding.

ISSUES: The issues included the rate for legal fees and the number of hours lawyers should be funded. Potential parties requested funding for legal fees for each

of their counsel at the market rate rather than the legal aid rate. The proponent took the position that the legal aid rates were applicable and that funding should be only for the equivalent of one lawyer. The proponent questioned whether funding should be provided for two citizens' groups where there did not appear to be any difference between their interests. Also at issue were the requirement for contribution by the parties and funding for specific areas of expertise.

DECISION:

The adjudicator was not persuaded that the second citizens' group needed separate representation. Funding was granted, in a decision issued February 20, 1994, for only one of the citizens' groups. Legal fees were funded at the legal aid rate until the board has an opportunity to assess the accomplishments of the potential parties in making the hearing shorter and more focused. The number of lawyers' hours that would be funded was reduced from that requested by the potential parties. Funding was awarded for specific areas of expertise. [CH-94-02(F)]

APPLICANT:

Safety Kleen Canada Inc. (Funding)

The Funding Panel received one application for funding from the Breslau/Kitchener/Waterloo Concerned Citizens (BKWCC), a group which was granted intervenor status at the preliminary hearing. Safety Kleen Canada Inc. informed the Funding Panel, by letter, that it did not object to being named the funding proponent under the Intervenor Funding Project Act.

The parties took the initiative to negotiate a settlement in advance of the Funding Hearing. The Funding Panel was satisfied that the public interest was being addressed through the Issues List identified by the concerned residents. It included such matters as stack emissions, effluent disposal and the adequacy of contingency measures for the protection of human health and the environment.

DECISION:

The Funding Panel decision, accepting the agreement as submitted, was issued on June 24, 1994. [EP-93-03(F)]

COSTS DECISIONS

At the conclusion of the hearing process, the board is often asked to adjudicate on outstanding applications for costs. In some long hearings, interim costs may be awarded, and in most of our hearings, intervenor funding will have been available to cover some of the expenses of the hearing.

Parties are encouraged to discuss and settle their costs requests wherever possible. In many cases, no board order is necessary. In others, the board may issue a consent order. In cases where no agreement can be reached, the board will receive written submissions, sometimes hold an oral hearing, and then determine the costs payable.

The following costs matters were considered and settled during the 1994-95 fiscal year:

Leslie Extension & Bayview Widening:

The Panel held a two day hearing to hear

submissions on liability, and having received that decision, the parties settled the quantum to be paid with the proponent. The board issued consent orders in the total amount of \$390,000.

City of Orillia:

The Joint Board dismissed a claim for costs by an intervenor against the proponent; this decision is under appeal to Cabinet.

Laidlaw Rotary Kiln:

Costs in the total amount of approximately \$121,300 were requested. In a decision dated June 24, 1994, the Hearing Panel awarded costs in the amount of \$62,325.35.

Sudbury Landfill Site:

Only one party requested costs of \$300.00, and the proponent agreed to this request.

JUDICIAL REVIEW

EASTVIEW ROAD LANDFILL EP-92-02

As noted in last year's Annual Report, the board's decision to approve the expansion of the Eastview Road Landfill for up to five years, with certain terms and conditions, was appealed to the Divisional Court by the proponent and the Ministry of Environment and Energy. In January 1995 the Divisional Court allowed this appeal. The court determined that the board does not have the authority to impose a property value protection plan as a condition of approving the expansion of a landfill under the *Environmental Protection Act*. Two of the three members of the court stated that "if the legislature intended that

the board should have the power to require compensation of those whose properties have or may lose value because of the operation of the site, it would have specifically so provided." In addition the court found that the board did not have the authority to preclude the proponent from re-applying for a further certificate of approval, and therefore the board could not require the permanent closure of the landfill following the expiry of this approval. Finally, the court also found that the board could not impose a condition that would require the early closing of the landfill if the proponent failed to diligently pursue its long-term waste management master plan.

NIAGARA ESCARPMENT HEARING OFFICE

PROTECTING AN INTERNATIONAL BIOSPHERE RESERVE

The Niagara Escarpment Hearing Office is housed in the Environmental Assessment board offices. All of the Niagara Escarpment Hearing Officers, who hear appeals of decisions made by the Niagara Escarpment Commission, are members of the Environmental Assessment Board.

In 1994, 71 appeal decisions were filed. Of these appeals: one went to a Consolidated Board Hearing; 13 were withdrawn; 2 were postponed; and 68 were heard by Niagara Escarpment Hearing Officers.

Niagara Escarpment Hearing Officers are required to prepare a written report with recommendations to the Minister of Environment and

Energy. The Minister then makes a decision. Of the decisions made in 1994, the Minister concurred with the recommendations of the hearing officers on all but two appeals.

Niagara Escarpment Hearing Officers also hear applications for amendments to the Niagara Escarpment Plan. In 1994, there were two hearings on amendments to the Niagara Escarpment Plan.

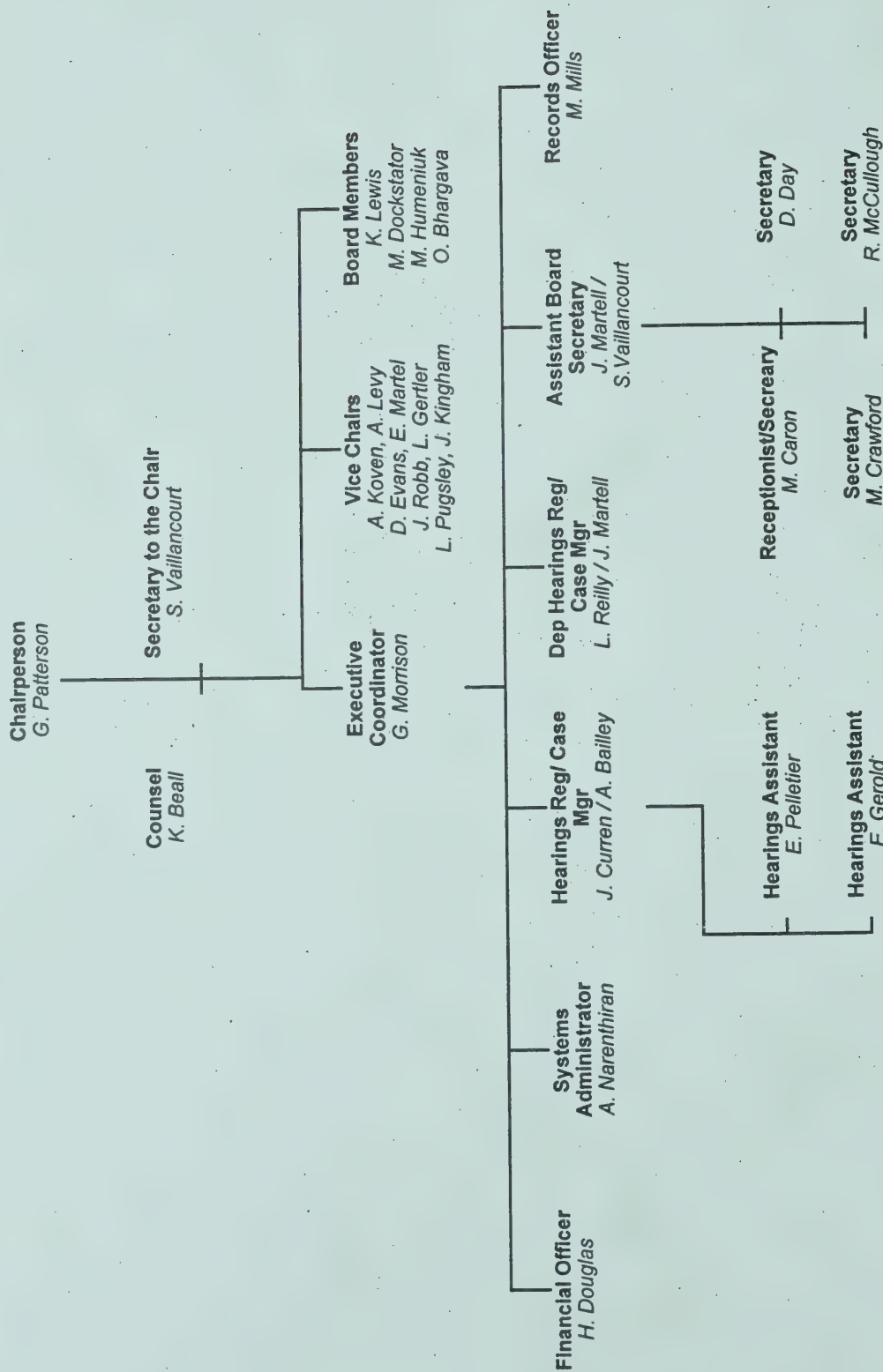
In some cases, resolutions between parties have been negotiated during the hearings. These negotiated resolutions are forwarded to the Minister in the Hearing Officer's report.

Overview of the Relevant Legislation

Purpose	Initiative for Hearing	The Board's Role	Appeal
Environmental Assessment Act			
- "The betterment of the people of the whole or any part of Ontario by providing for the protection conservation and wise management in Ontario of the environment".	The Minister of Environment and Energy may require a hearing in response to a request or on the Minister's own initiative	The Board determines the acceptability of an environmental assessment for a proposed provincial and municipal undertaking (and private undertaking where designated by the Minister). The Board may accept the undertaking, reject it or accept it on terms	Within 28 days the Minister may vary or substitute the Board's decision, or require a new hearing.
Environmental Protection Act *	The Director of Approvals shall require a hearing for some types of waste disposal sites. As well, the Board may be required to determine whether a municipal by-law should apply to a proposed waste disposal site.	The Board decides whether a certificate of approval should be issued, and if so, what its terms and conditions should be. The Board's decision must be implemented by the Director.	A party to a proceeding may appeal from the Board's decision to the Divisional Court on a question of law and on any other question to Cabinet within 30 days.
Ontario Water Resources Act	The Director of Approvals shall require a hearing when a proposed sewage works enters another municipality or prior to defining an area of public water and sewage service. The Director may require a hearing with respect to a sewage works within a single municipality.	The Board decides whether a certificate of approval should be issued, and if so what its terms and conditions should be. The Board is not required to hold a hearing if no person objects to the proposed works or if the objections are insufficient. The Board's decision must be implemented by the Director	A party to a proceeding may appeal from the Board's decision to the Divisional Court on a question of law and on any other question to Cabinet.
Consolidated Hearings Act	A proponent of an undertaking shall request that hearings be consolidated and heard by a joint board.	A Joint Board may hold a hearing, and make a decision in respect of matters that could be considered at hearings under the enumerated statutes. It has broad powers to defer the consideration of any matter.	Within 28 days the Cabinet may confirm, vary or rescind a Joint Board's decision or it may require a new hearing.
Intervenor Funding Project Act	A party granted intervenor status for a hearing before the EAB or the Joint Board may apply for intervenor funding.	In a proceeding before the EAB or a Joint Board an intervenor may apply for intervenor funding. Upon receipt of the application a funding panel (not being part of the hearing panel) shall decide any application for intervenor funding, including issues of eligibility and amount of funding.	An appeal lies to the Ontario Court (General Division) only on a matter of law

*The Environmental Assessment Board is also responsible for the operation of the Board of Negotiation established pursuant to section 172 of the Environmental Protection Act.
Note: For full particulars refer to the relevant legislation.

ENVIRONMENTAL ASSESSMENT BOARD ORGANIZATIONAL CHART



For further information or material,
please call or write:

Environmental Assessment Board
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Toronto, Ontario M4P 1E4
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ENVIRONMENTAL ASSESSMENT BOARD

ANNUAL REPORT
1995 - 1996



ENVIRONMENTAL ASSESSMENT BOARD
ANNUAL REPORT
1995 - 1996

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CHAIR'S MESSAGE

I noted last year that the goal of the annual report was to show how the board is building on past experience and approaching its business in new ways to achieve its purpose and be a positive force for change.

The environmental assessment hearings conducted this past year demonstrated a commitment to new approaches. The *West Northumberland* hearing was planned in phases so that fundamental preliminary questions could be determined through affidavit evidence and argument. The *Wellington/Guelph* landfill hearing was being organized according to substantive issues in order to concentrate on those, rather than becoming bogged down in process questions. Although neither hearing continued to the main hearing stage, there was a demonstrated commitment to making the hearing process more efficient.

While the special legislation that created the Interim Waste Authority was repealed, the organization of the three hearings considering Interim Waste Authority proposals for landfills in Durham, York and Peel is viewed as a successful approach to the management of large hearings built on lessons learned in the past.

Other, shorter hearings have benefitted from the Board's detailed management approach to hearings. In the *Onaping* landfill hearing, the board conducted a telephone hearing in conjunction with a negotiation process contemplated by the *Protocol for Consideration of Agreements Among Parties*. Hearing time was reduced from days to hours.

*Shorter hearings
have benefitted
from the Board's
detailed
management
approach*

Other hearings are being planned using a strict schedule for examination and cross-examination. We will be evaluating whether this approach is providing the right balance of pre-hearing and hearing time, and an appropriate basis for decision-making.

Board staff are showing their flexibility and dedication by filling in and taking on additional roles as staff numbers decrease. Our

Executive Coordinator, Gail Morrison, has moved to the Ontario Energy Board as a full-time board member. Gail's range of skills and abilities helped set the case management/client service direction for the board, first for the Hydro Demand/Supply Plan hearing and later for the board as a whole. We also lost our seconded legal counsel,

Kathleen Beall, who was assigned to the Interim Waste Authority hearings but provided invaluable assistance by drafting new rules, providing advice to members on other hearings, and generally providing wise counsel.

The board also lost one of its most experienced full-time vice-chairs in June of 1995. Jim Kingham, who came to the board in 1987, was our acknowledged scientific resource, a strong chair of difficult hearings, and a significant contributor to board policy and procedure.

The board's Client Advisory Committee continued to provide advice and assistance during the year, and helped us develop a document called *Guidelines for Board-Appointed Facilitators and Mediators*. The board has been using mediation and facilitation

in a number of its processes to resolve issues, settle funding and costs awards, and generally shorten, or dispense with, formal hearings. These guidelines ensure that parties will be aware of the constraints under which mediators or facilitators acting on behalf of the board operate, and provide consistent goals for these processes.

The Advisory Committee was also invaluable to the board in considering possibilities for a streamlined environmental assessment process, the future without intervenor funding, and the board's development of its new *Rules of Practice*. The new rules implement innovations allowed by the *Statutory Powers Procedure Act*, including written and electronic hearings, review and reconsideration of board decisions, and an enhanced pre-hearing process which the board had already adopted through procedural directions. All of the board's practice and procedural directions have been appended to the new rules. In the process, advisory committee members were asked to seek comment from the groups they represent. Since the new rules are adopted under the *Statutory Powers Procedure Act*, they are not promulgated by regulation and the board has more flexibility to change any provisions that are not working well. The Board advised those receiving the new rules that it would appreciate any comments about the operation of the rules in order to make changes if they appear necessary.

The challenge for next year will be to obtain complete and balanced evidence at hearings without intervenors having access to funding. The board is re-considering its costs guidelines to try to provide better guidance to participants in hearings. Although costs cannot replace intervenor funding, greater predictability and consistency in costs awards is a desirable goal.

Significant challenges lie ahead. The legislative framework that governs our work has been under review. Some changes have already been announced. However, we expect clearer government direction through additional legislative and policy initiatives. Meanwhile, as promised in last year's annual report, we have produced a review of board cases that considered the requirements of the *Environmental Assessment Act*. The board will continue to interpret and implement legislation and policy in light of environmental protection goals and to the best of its ability.



Grace Patterson

BOARD MEMBER BIOGRAPHIES

GRACE PATTERSON - BOARD CHAIR

- ▣ Board Chair since February, 1990
- ▣ joined the Board as a Vice Chair in 1986
- ▣ practised environmental law with the Canadian Environmental Law Association from 1978 to 1986
- ▣ served on the Science Advisory Board of the International Joint Commission and on the Canadian Environmental Assessment Research Council
- ▣ was a special lecturer in environmental law, Queen's University Law School

FULL-TIME VICE CHAIRS

PAULINE BROWES

- ▣ appointed in October 1995
- ▣ received Bachelor of Arts (Political Science) from York University, Toronto in 1979 and holds an Elementary Teaching Certificate from Toronto Teachers' College (1959)
- ▣ Member of Parliament from 1984 to 1993; Cabinet Minister and Privy Councilor (1991 - 1993); Minister of Indian Affairs and Northern Development (1993); Minister of State - Environment (1991 - 1993)
- ▣ Commissioner and Appeal Commissioner, Residential Tenancy Commission, Government of Ontario (1981 - 1984)
- ▣ Committee Member, Chiropractic Review Committee, Government of Ontario (1976 - 1981)

DAVID EVANS

- ▣ appointed in July 1992 as a part-time member, then in November, 1994 became full-time Vice Chair
- ▣ received his Bachelor of Arts (Anthropology) from McMaster University and his Master of Arts (Sociological Anthropology) from the University of Calgary
- ▣ experienced environmental mediator, facilitator and trainer, who has spoken widely on issues related to public consultation and community affairs
- ▣ former mediation and advocacy consultant
- ▣ Niagara Escarpment Hearing Officer since July, 1992.
- ▣ former Manager, Community Affairs, Ontario Ministry of the Environment, responsible for supporting the implementation of the Ministry policy on public consultation including developing consultation training materials for Ministry staff

LEN GERTLER

- appointed to the Board May 1990
- Professor Emeritus, University of Waterloo, and a Fellow of the Canadian Institute of Planners
- combines an interest in planning, development, and environmental management in both an urban and regional context in Canada and abroad
- foreign assignments include work in Southeast Asia and the Caribbean for United Nations agencies and CIDA
- author and editor of several books on environmental and planning issues
- cross-appointed as Deputy to the Mining and Lands Commission

ANNE KOVEN

- appointed to the Board in April 1987
- holds a Master's degree in Public Administration from Queen's University
- former Research Director of the Upper Ottawa Landfill Site Study, commissioned by the Ministry of Health
- experience in the mining industry and with the Ontario Advisory Council on Occupational Health and Safety

ALAN D. LEVY

- appointed to the Board in May 1990
- has a B.A. and an LL.B. from the University of Toronto
- practised law in the area of litigation, appearing before both courts and tribunals
- one of the founders of the Canadian Environmental Law Association, and a member of its board of directors for 20 years
- cross-appointed as a member of the Ontario Environmental Appeal Board and as a Niagara Escarpment Hearing Officer.

ELIE W. MARTEL

- appointed to the Board in March 1988
- formerly a teacher and an elementary school principal, prior to his election to the Legislative Assembly in 1967
- served as the NDP member for Sudbury East from 1967 to 1987, and as House Leader for his party from 1978 to 1985
- author of two major reports on health and safety in the workplace

LINDA PUGSLEY

- joined the Board as a part-time member in July 1992 and became a full-time Vice Chair in September, 1994
- background in nursing and citizen participation
- served as Alderman on Burlington City Council from 1978 to 1992, where she concentrated on planning and development, strategic planning, environmental management, and administration and finance
- served on the Municipal Advisory Committee of the Niagara Escarpment Commission, Five-Year Review

JIM ROBB

- appointed to the Board in 1990
- holds degrees in Science and Forestry and a Commercial Pilot's Licence
- past Chairman of Save the Rouge Valley System, and worked on watershed conservation issues
- previously owned and operated an urban tree care business
- has written for various publications and his photographic credits include the cover of the Crombie Royal Commission Report, *Watershed*

PART-TIME MEMBERS**OM BHARGAVA**

- appointed to the Board in 1995
- president of Omtex Inc., which provides consulting services in the fields of Analytical Chemistry and Pollution Prevention and Treatment Technologies
- M.Sc., D.I.C., Imperial College, London University, U.K.
- Supervisor of Corporate Analytical Chemistry, Stelco Inc. (1963-91); Research Chemist, Alcan Aluminium Ltd. (1960-63)
- senior research scientist under contract at the Wastewater Technology Centre (Environment Canada)
- has provided expertise to the international steel community, including the International Standards Organization and the American Society for Testing Materials
- author of 50 technical publications, also a recent major Environmental Report on "Waste Management and Pollution Prevention Opportunities in the Iron & Steel Industry"
- leader of twelve overseas Canadian delegations to the International Standards Organization committee meetings
- Fellow of the Chemical Institute of Canada and of ASTM

MARK DOCKSTATOR

- appointed to the Board in 1994
- has a doctorate in law from Osgoode Hall Law School and B.Sc. from University of Waterloo
- expert on aboriginal rights
- President of the Aboriginal Research Institute
- mediator for the Indian Claims Commission, and has performed various roles for the Royal Commission on Indian Land Claims
- taught part-time at the Faculty of Environmental Studies at York University

JOHN W. DUNCANSON

- became a Hearing Officer under the Niagara Escarpment Planning and Development Act in 1975, and was cross-appointed to the Board in 1991
- B.A. and Business Certificate from the University of Toronto
- formerly employed with Bell Telephone Company
- former Director of the Department of Alumni Affairs at the University of Toronto

LEONORE FOSTER

- appointed in May, 1995
- Municipal Councillor for Pittsburgh Township, 1988 - 1994; area of specialisation: Waste Management, Costs Management and Planning
- Board Member, Cataraqui Region Conservation Authority, 1986 - 1994; Chair, Conservation Areas and Community Relations Board, 1987 - 1994
- Board Member, Kingston Area Recycling Corporation, 1988 - 1995; President 1992 - 1994; Vice-President, 1990 - 1992; Chair, Kingston Area CFC Committee, 1992 - present; Editor and co-author of the *Cassandra Report* on fluorocarbons, 1993; co-author of the *First to Fifty* on waste reduction, 1991
- Winner of the Recycling Council of Ontario's Waste Minimization Award, 1994, in the category of "Outstanding Individual Adult"

MYRON HUMENIUK

- appointed in 1995
- obtained B.Sc. in Environmental Sciences in 1975 and M.Sc. in Fisheries Ecology in 1980, from the University of Toronto
- 20 years of experience in environmental management
- has participated in over 60 environmental impact assessment projects
- worked internationally in countries such as France, Greece, India, Mexico, Pakistan and the United States
- active member of the American Fisheries Society; currently Secretary-Treasurer of the International Fisheries Section and President-elect of the Native Peoples' Fisheries Section
- served as a member of the steering committee of the First World Fisheries Congress, and co-editor of the proceedings

KEITH LEWIS

- appointed in 1992
- currently Director of Environmental Programs for the North Shore Tribal Council in Blind River, and a member of the Band Council of the Serpent River First Nation
- participated in environmental assessment hearings at both the federal and provincial levels on behalf of groups like the Union of Ontario Indians and North Shore Tribal Council
- has provided advisory and advocacy services to both the Union of Ontario Indians and the Chiefs of Ontario
- provided services in the area of public consultation, management, and administration to the North Shore Tribal Council and others

JOHN MCCLELLAN

- appointed Hearing Officer under the Niagara Escarpment Planning and Development Act in 1989 and cross-appointed to the Board in 1991
- geographer, involved in land use matters for 35 years
- former Executive Director of the Prince Edward Island Land Use Commission

DON SMITH

- ▣ appointed in 1995
- ▣ graduated from Lakehead University (B.A. Sociology)
- ▣ worked as a high school teacher, journalist, executive director of social planning council and research assistant for MPs office
- ▣ served two terms on Thunder Bay city council
- ▣ served with various environmental organizations:
 - President, Environment North (environmental advocacy group)
 - Board, Thunder Bay 2002 (Green Communities Initiative Group)
 - Member, Thunder Bay Chamber of Commerce Environment Committee
 - Member, Lake Superior Forum (bi-national advisory committee to governments regarding zero discharge of toxic chemicals to Lake Superior)
 - Steering Committee, Ontario Environment Network
 - Board, Lakehead Region Conservation Authority
 - Editorial Board, Lake Superior Alliance Newsletter

LEARNING PROGRAM

The 1995-96 learning program was a wide-ranging program reflecting the board's commitment to keeping itself up-to-date on technical and administrative matters. Half-day seminars and full-day workshops were held regularly throughout the year. A field trip to follow up on the board's Halton landfill decision was included in the program. As well, the board took the time to review and update its strategic plan.

Technical workshops covered: the latest work on hydrogeology, rules of evidence and scientific evidence, environmental issues in the iron and steel industry and environmental assessment in Canada. The board also held a follow-up workshop from the 1994-95 program on First Nations and the hearing process.

Administrative services was the subject of half-day seminars. As well, the board updated its rules of practice and explored the means for enhancing its corporate outlook.

Specific attention was given to Niagara Escarpment appeal hearings as board members are appointed by the Minister of Environment and Energy to hold conduct these hearings.

Fundamental to the board's learning program is the involvement by board members. Board members not only design the sessions, but, in many cases, are presenters along with those from the community who have relevant expertise. Question and answer periods and open discussion are important elements in all learning program sessions.

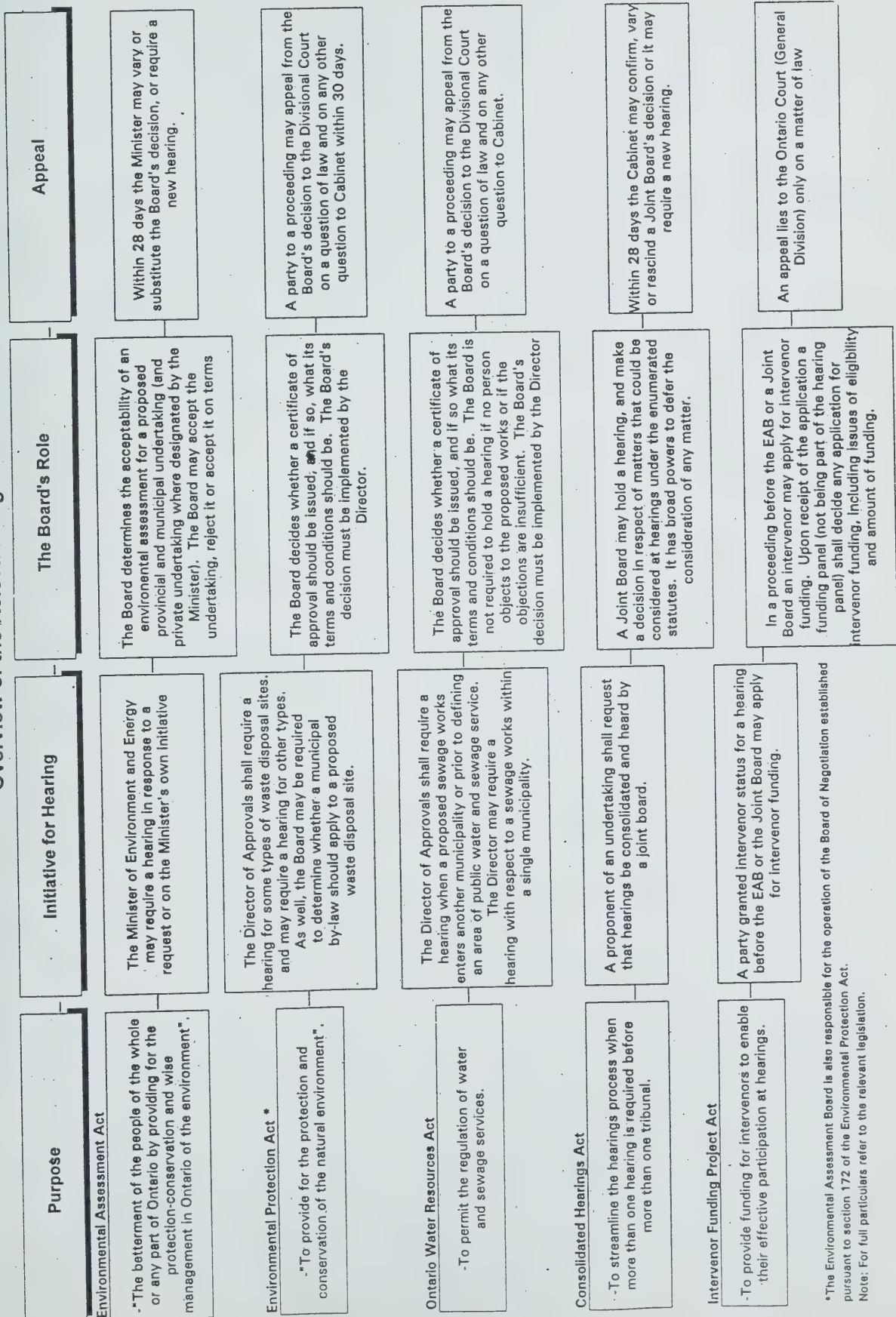
Question and answer periods and open discussion are important elements

The 1996-97 program will build on the 1995-96 program.

A workshop covering new regulations and amended legislation and their effect on board hearings is planned for next year. As well, special attention will be given to cumulative effects assessment, incineration technology issues, Niagara Escarpment plan amendment hearings and the board's use of alternative dispute resolution. Seminars and workshops will cover social impact and risk assessment, environmental information sources and services (including the Internet) and the monitoring of conditions imposed by board decisions. Field trips and the board's annual strategic plan review are also planned.

Chart of Relevant Legislation

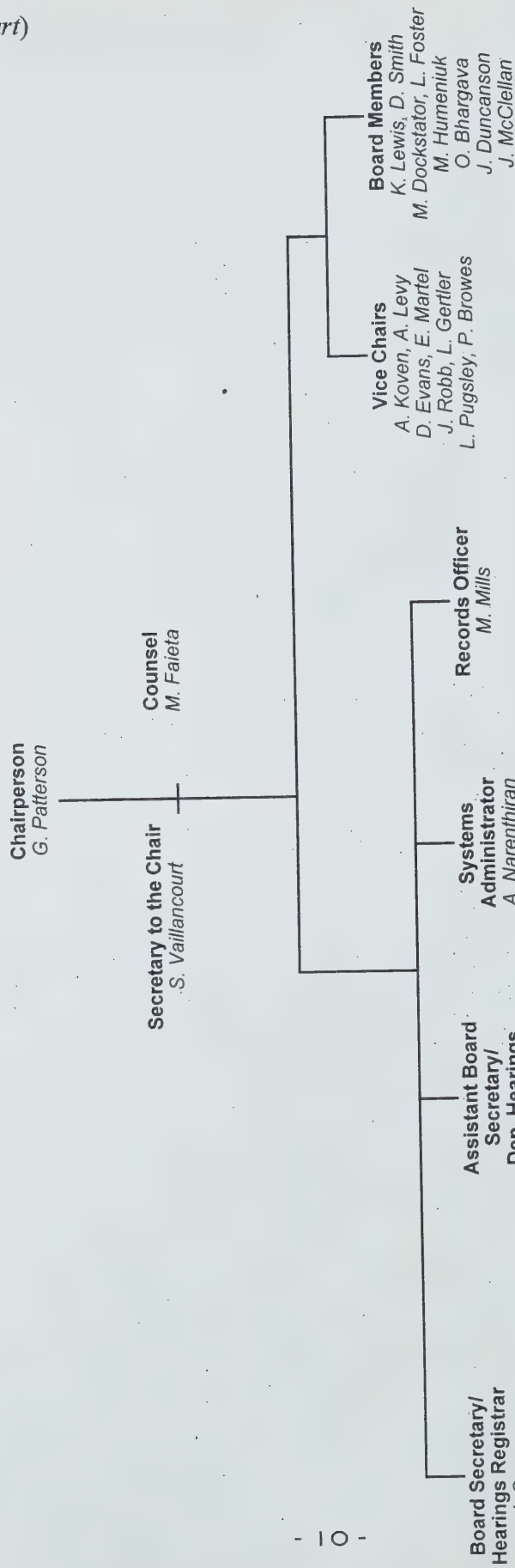
Overview of the Relevant Legislation



*The Environmental Assessment Board is also responsible for the operation of the Board of Negotiation established pursuant to section 172 of the Environmental Protection Act.
 Note: For full particulars refer to the relevant legislation.

(Organizational Chart)

ENVIRONMENTAL ASSESSMENT BOARD ORGANIZATIONAL CHART



DECISION SUMMARIES

FISCAL YEAR 1995 - 1996

APPLICANT: CITY OF PORT COLBORNE - ELM STREET LANDFILL

The City of Port Colborne applied for an approval to expand its Elm Street Landfill to accept an expanded range of municipal waste generated within the City of Port Colborne, and to extend the waste fill area upwards, for a five year period. This application was unopposed.

ISSUES: The parties were able to resolve all issues in advance of the hearing and jointly prepare a comprehensive certificate of approval. As a result, the only issue was whether the settlement met the Board's *Protocol for Consideration of Agreements Among Parties*.

DECISION: The Board approved the application after a one-day hearing. The Board found that the settlement should be adopted as it was the product of effective public consultation and otherwise served the public interest.

RELEASED: April 28, 1995 [EP-94-02]

APPLICANT: TOWNSHIP OF SOUTH GOWER - MUNICIPAL LANDFILL SITE

The Township of South Gower applied for approval to expand the area of its municipal landfill site used for landfilling purposes by 0.41 hectares to 1.25 hectares and for approval to operate this landfill for a further five year period.

ISSUES: This application was unopposed. However, several concerns raised at the preliminary hearing, including the monitoring of methane gas generated by the landfill and the establishment of a proper vegetative buffer around the landfill, were addressed by the Board during a two-day hearing.

DECISION: The Board approved the application and made various amendments to the terms and conditions of the draft Certificate of Approval to address the areas of concern.

RELEASED: August 16, 1995 [EP-94-03]

APPLICANT: SAFETY KLEEN CANADA INC. - Breslau Used Oil Re-Refinery

Safety Kleen Canada Inc. applied to modify its existing Certificate of Approval issued for its oil re-refinery to allow the processing of about 192 million litres of used oil annually and process "incidentally received" used oils that contain polychlorinated biphenyls.

ISSUES: There was a history of public concern regarding the effects of the re-refinery on the quality of the air and water in the communities of Breslau and Kitchener. The issues identified included stack emissions, odour problems, water quality concerns, effluent disposal problems, PCB management and incoming waste problems, traffic concerns and the adequacy of contingency measures.

DECISION: The Board approved the application subject to numerous conditions that addressed the issues identified.

RELEASED: September 29, 1995 [EP-93-03]

APPLICANT: COUNTY OF SIMCOE - NORTH SIMCOE LANDFILL

As noted in the last Annual Report, on February 2, 1995 a Joint Board approved the County of Simcoe's application for a municipal landfill to be located in the Township of Tiny subject to certain agreed-upon conditions and a further process to finalize the conditions of approval.

ISSUES: The Board received submissions regarding the appropriate capacity of the landfill, the service area, the establishment of a Technical Advisory Panel to review the monitoring programs, host municipality compensation, community compensation, and a small claims dispute resolution process.

DECISION: The Board issued a decision with certain conditions of approval and, in some instances, provided parameters to allow the parties to draft detailed conditions.

RELEASED: February 1, 1996 [CH-87-03]

**APPLICANT: REGIONAL MUNICIPALITY OF SUDBURY - ONAPING FALLS
LANDFILL**

The Regional Municipality of Sudbury applied to amend its certificate of approval for the Onaping Falls landfill to operate for a further five years while the Regional Municipality looked for a long-term solution to its solid waste disposal needs. The amendment would allow the continued landfilling of municipal waste generated in the Town of Onaping by using the current area of operation through vertical expansion. The Minister of Environment and Energy exempted this application from the requirements of the *Environmental Assessment Act*.

There was no opposition to this application. The Ministry of Environment and Energy and the Regional Municipality agreed upon a draft Certificate of Approval that was submitted for the Board's approval. A hearing was held by teleconference on January 17, 1996.

ISSUES: The major issue raised by the Ministry was whether the Board could impose a condition requiring the Regional Municipality to move expeditiously to obtain the necessary regulatory approvals for a long-term waste management plan.

DECISION: The Board approved the application and adopted the draft Certificate of Approval after finding that the requirements of the *Protocol for Consideration of Agreements Among Parties* had been satisfied. The Board found that it did not have the authority, under the *Environmental Protection Act*, to impose the condition sought by the Ministry of Environment and Energy in light of the Divisional Court's decision on this point in Regional Municipality of Sudbury v. Director of Approvals, Ministry of Environment and Energy, dated October 16, 1995.

RELEASED: February 6, 1996. [EP-95-01]

**APPLICANT: COUNTY OF NORTHUMBERLAND - WEST NORTHUMBERLAND
LANDFILL SITE (PHASE I RULINGS)**

The County of Northumberland sought approval for a new landfill site in the Township of Haldimand under several statutes including the *Environmental Assessment Act*. After a preliminary hearing it was decided that the first phase of the hearing would consider whether, based on a review of the documentary evidence and affidavit evidence, there existed impediments to the acceptance of the EA and approval of the undertaking of such magnitude as to justify terminating the hearing thereby avoiding further hearing costs.

ISSUE #1: The proponent raised twelve issues that essentially addressed the soundness of the methodology of its environmental assessment. The purpose of this review was to

consider whether there were fundamental flaws in the County's environmental assessment and site selection process.

ISSUE #2: The Board was asked by the Ministry of Environment and Energy to interpret the proper scope of the requirement for "acceptance" of the environmental assessment and of the requirement for "approval" of the environmental assessment.

DECISION #1: The Board concluded that waste export, minimum site size and the late addition of a composite liner to the site design established deficiencies in information or process capable of significantly influencing the County's selection of alternative sites and the preferred alternative. These deficiencies constituted fundamental flaws, as they put the case for acceptance, approval or both in such doubt that the hearing should not continue at this time.

With respect to the other issues the Board found that there were evidentiary disputes which could not be resolved on documentary evidence alone, and that the effect of those issues on the choice of alternatives could not yet be determined.

DECISION #2: The Board found that the acceptance of the EA signifies that it contains enough information to permit the Board to proceed to the next stage to consider the question of the approval of the undertaking. In order to be found acceptable, an environmental assessment must canvass all of the matters listed in subsection 5(3) of the Act and demonstrate that a reasonable planning process had been developed and implemented by the proponent. Where an environmental assessment is deficient, the Board will afford the proponent an opportunity to repair it. Although the Board does not appear to have the power to reject an environmental assessment, it is not compelled to accept one that is deficient. Instead, the proceedings may be adjourned or deferred by the Board to permit the proponent to undertake further investigations and study with a view to amending the EA or to withdraw its application.

Approval of an undertaking requires an acceptable environmental assessment. In addition the Board must be satisfied that: a) the undertaking is the preferred alternative among an adequate set of reasonable and suitable alternatives; b) the environmental advantages outweigh the disadvantages, and the undertaking is reasonable and worthy of approval; c) where it creates a risk of environmental harm, the need for the undertaking must first be clearly established; d) any resulting environmental harm must be adequately mitigated or eliminated.

RELEASED: February 9, 1996 and February 13, 1996 [CH-94-02]

APPLICANT: COUNTY OF WELLINGTON/CITY OF GUELPH
PROPOSED N-4 LANDFILL

Following the last preliminary hearing in December 1995 the proponent applied to the Board for permission to withdraw its Notice to the Hearings Registrar filed under the Consolidated Hearings Act. In support of this request the proponent advised that recent hydrogeological investigations indicated that the proposed landfill site was unsuitable.

ISSUES: The sole issue was whether the proponent should be permitted to withdraw.

DECISION: The proponent's request to withdraw its application was unopposed by the parties, and was granted by the Board under subsection 6(2) of the Consolidated Hearings Act on condition that any requests for costs be dealt with appropriately.

RELEASED: February 21, 1996 [CH-95-04]

APPLICANT: ELSA GRECO - SEVERANCE AND DEVELOPMENT APPLICATION

This hearing arose from the appeal of a condition placed by the Regional Municipality of Hamilton-Wentworth on the severance of a lot created by testamentary devise (before changes to the *Planning Act* removed the possibility of lot creation through testamentary devise) and the Niagara Escarpment Commission's refusal to grant her a development permit for the construction of a single family dwelling.

ISSUES: The main issue in this hearing was whether Ms. Greco's property was an existing lot of record under the Niagara Escarpment Plan.

DECISION: The Board found that Ms. Greco's parcel did not require a consent to convey under the *Planning Act*. However, Ms. Greco's parcel was not an existing lot of record as defined by the 1985 or 1994 Niagara Escarpment Plan, nor did it meet the requirements of the new lots policies for the Escarpment Protection Area designations of the 1994 Niagara Escarpment Plan. The parcel was therefore ineligible to receive a development permit according to the requirements of the Niagara Escarpment Plan.

RELEASED: March 29, 1996 [CH-95-05]

APPLICANT: ARMBRO INC. - PROPOSED SAND AND GRAVEL PIT

Armbro Inc. applied for approval to extract 4.08 million tonnes of sand and gravel from a 67 hectare property in the Town of Caledon. Two-thirds of this property is located in the Niagara Escarpment Plan's rural area designation. The proposed pit is in the vicinity of other gravel extraction operations.

ISSUES: The issues considered at the hearing included: what level of nuisance impact should be borne by nearby residents; whether the property should be deleted from the Niagara Escarpment Plan; whether the designation of the property should be changed from Escarpment Rural to Mineral Resource Extraction; and the potential for groundwater contamination.

DECISION: The Board approved the application. It re-designated the property from Escarpment Rural to Mineral Resource Extraction in the Niagara Escarpment Plan. It also issued a Class A licence pursuant to the *Aggregate Resources Act* permitting Armbro to extract aggregate from the property for 15 years conditional upon confirmation that the site plans conform with the conditions of approval. The formation of a Residents' Review Committee was required. The Board also imposed a number of conditions aimed at preventing groundwater pollution and minimizing nuisance impacts. Of particular significance, one condition requires that Armbro shut down its operations if, and when, it exceeds provincial noise and dust standards.

RELEASED: April 4, 1996 [CH-92-05]

INTERVENOR FUNDING DECISIONS

APPLICANT: INTERIM WASTE AUTHORITY - CITIZENS' SITE COALITION GROUP AND THE IT'S NOT GARBAGE COALITION (FUNDING)

Five intervenor groups (together called the Citizens' Site Coalition Group) and the It's Not Garbage Coalition were granted party status to the Phase 1 hearing. The CSCG represented the interests of thousands of individuals living in the area of the proposed landfills. CSCG requested about \$1.4 million in funding. The It's Not Garbage Coalition represented community, labour, citizens and environmental groups that promoted waste reduction and diversion. ING requested about \$500,000 in funding. The IWA agreed to be named as the funding proponent.

ISSUES: The issues before the Board included whether CSCG and ING represented different interests, whether there would be duplication in CSCG's and ING's approach, and whether CSCG and ING should contribute to their costs.

DECISION: The Board found that CSCG and ING represented "clearly different" interests as the CSCG represented community groups opposed to the IWA's undertaking whereas the ING's participation was for the purpose of promoting the 3Rs in the Greater Toronto Area. The Board reduced the number of hours for legal, case management and consultant fees in CSCG's and ING's funding applications to avoid duplication of work. Finally the applicants were required to contribute 5% of all fee and disbursement dollars awarded, pre-GST.

The CSCG was awarded \$335,616.12 and the ING was awarded \$238,059.26.

RELEASED: May 8, 1995 [CH-94-03/03/05(F)]

APPLICANT: WEST NORTHUMBERLAND

The Township of Haldimand and the Brookside Environmental Committee were parties to the West Northumberland landfill hearing. In February 1995 they were granted \$172,074.04 and \$83,377.48 respectively, in order to review documents and define and describe the issues for the pre-hearing. They submitted a second application to obtain funding for preparation and attendance at a further preliminary hearing and the first phase of the hearing.

ISSUES: Some of the issues included whether the County of Northumberland should be named the funding proponent, whether the Township's application should be dismissed because it was filed late and whether the applicants should be required to contribute to the cost of their representation.

DECISION: The County of Northumberland was named the funding proponent, even though some of the issues to be decided in the phase 1 hearing were raised at the request of the Ministry of Environment and Energy. The Board refused to dismiss the Township's application as it found that the County had not been prejudiced by the late filing. The Board also required each applicant to make a 2% contribution to their costs. The Township was awarded \$55,671.16 and the Brookside Environmental Committee was awarded \$39,419.53.

RELEASED: September 13, 1995 [CH-94-02(F)]

APPLICANT: ICI CANADA INC. (FUNDING)

The Walpole Island First Nation was party to a hearing before the joint board where ICI Canada Inc. sought approval to construct and operate piping/pumping facilities for the controlled discharge of 3.4 million cubic metres of treated process water into the St. Clair River from an existing pond water treatment system. The WIFN is situated on six islands at the mouth of the St. Clair River, about 10 kilometres downstream from the ICI facility. WIFN was concerned that contaminants from the proposed discharge would accumulate and adhere to the river's sediments thereby contributing to the bio-magnification of toxic chemicals in the aquatic food web and the bio-accumulation of these contaminants in WIFN members who eat this food. WIFN applied for \$430,691.77 in funding. ICI agreed that it should be named the funding proponent, if the Board found that WIFN was eligible for funding.

ISSUES: At issue was whether WIFN represented a "clearly ascertainable" interest, whether its concerns duplicated those of the Ministry of Environment and Energy, and whether it had the ability to pay for its own representation.

DECISION: The Board awarded \$82,455.71 to the WIFN. The Board found that the WIFN represented a "clearly ascertainable" interest, in part because it relied upon the fish of the St. Clair River as a source of food to a much greater degree than any other community. The Board also rejected the Ministry of Environment and Energy's submission that WIFN's participation would be duplicative. WIFN was required to contribute 2% of all fee and disbursement dollars awarded.

RELEASED: January 11, 1996 [CH-95-02(F)]

COSTS DECISIONS

At the conclusion of the hearing process, the board is often asked to adjudicate on applications for costs. In some long hearings, interim costs may be awarded, and in most hearings, intervenor funding will have been available to cover some of the expenses of the hearing.

Parties are encouraged to discuss and settle their costs requests wherever possible. In many cases, no board order is necessary. In others, the board may issue a consent order. In cases where no agreement can be reached, the board will receive written submissions, sometimes hold a hearing, and then determine the costs payable.

The following cost applications were considered and settled through board orders during the 1995-1996 fiscal year:

APPLICANT: STEETLEY QUARRY PRODUCTS - SOUTH QUARRY LANDFILL

As noted in last year's Annual Report, the Board dismissed Steetley's application to establish a waste disposal site on March 17, 1995. A one day hearing was held on July 21, 1995 with respect to an application for costs submitted by the Regional Municipality of Hamilton. All other costs applications had been settled.

The Regional Municipality sought \$679,317.99 in legal fees and disbursements as well as \$658,564.88 in experts fees. In a decision dated September 29, 1995 the Board awarded costs totalling \$691,000.

APPLICANT: INTERIM WASTE AUTHORITY - METROPOLITAN TORONTO/YORK REGION, PEEL REGION & DURHAM REGION CH-94-03/04/05

As noted in last year's Annual Report, the Interim Waste Authority requested consolidated hearings into their applications for three landfill sites: one in York Region, one in Peel Region and one in Durham Region. Preliminary hearings were held. However, in July 1995 the IWA requested that the applications before the Board be withdrawn. Subsequently many parties to these hearings applied for costs. Some claims were settled. Fifteen other claims were decided by the Board on February 13, 1996. Most notably the Town of Pickering was awarded \$154,246.14 (it had claimed \$1,761,462.00), the City of Vaughan was awarded \$145,368.39 (it had claimed \$854,019.00), and the Regional Municipality of York was awarded \$78,601.68 (it had claimed \$854,019.00).

APPEALS TO CABINET

APPLICANT: ROBERT YOUNG SOD FARMS LTD. EP-93-06

This proposal involved the construction of retention facilities to accommodate various sludges from generators for transfer to organic soil conditioning sites. A discretionary hearing was held under section 32(1) of the *Environmental Protection Act*. The Board's decision was released on November 9, 1994.

An appeal to Cabinet was filed on December 7, 1994 by the Environmental Hazards Team. The Cabinet issued a decision on September 29, 1995 confirming the Board's decision.

APPLICANT: CITY OF ORILLIA CH-92-02

On October 23, 1993 a Joint Board approved the City of Orillia's application for an Official Plan Amendment (for the purpose of adding public parks as a permitted use within the Waterfront Commercial designation) and the City application for approval to expropriate part of a waterfront lot. On May 25, 1994 the Joint Board dismissed claims for costs made by the City and by the owner of the expropriated lot. Both costs decisions were appealed. They were dismissed by Cabinet on October 4, 1995.

APPLICANT: NORTH SIMCOE CH-87-03

As noted earlier in this annual report, the Board approved an application from the County of Simcoe for a landfill site in the Township of Tiny on February 2, 1995. The decision represented a Cabinet-ordered continuation of a hearing that had been completed years earlier. On February 28, 1995 the Wye Citizens' Group appealed this decision to Cabinet. The appeal was dismissed on April 2, 1996.

APPLICANT: STEETLEY QUARRY PRODUCTS - SOUTH QUARRY LANDFILL
CH-91-08

The application to develop the South Quarry Landfill to receive approximately 26 million tonnes of waste over approximately a thirteen year period was dismissed on March 17, 1995. An appeal to Cabinet was filed by the proponent on April 13, 1995. No decision has yet been reached.

JUDICIAL REVIEW

LAWGREN GROUP CH-90-16

Three matters, relating to the installation of a well, pumphouse and waterline for a previously approved subdivision, were consolidated in 1991 for a hearing before the Joint Board: an appeal to a hearing officer under the *Niagara Escarpment Planning and Development Act* from the Niagara Escarpment Commission's approval of a development permit for a water supply system; an appeal to the Ontario Municipal Board under the *Planning Act* from a severance granted by the Land Division Committee of the Regional Municipality of Peel; and a ratepayers' request for withdrawal of the approval of the draft plan of subdivision. The ratepayers brought a motion in 1993 seeking an order that the approval of the draft plan of subdivision had lapsed because it had not received final approval within three years.

The Joint Board issued its decision on May 28, 1993. The Board decided that the plan of subdivision had lapsed. The Board adjourned the two appeals relating to the severance and development permit application until a new approved draft plan of subdivision to be serviced by the proposed water works was obtained by the applicants. On June 29, 1994 the Divisional Court upheld the Board's decision and dismissed the applicants' application for judicial review. The applicants' request for leave to appeal was dismissed by the Court of Appeal for Ontario on April 10, 1995.

REGIONAL MUNICIPALITY OF SUDBURY LANDFILL CH-91-08

As noted in last year's Annual Report, the Board's decision to approve the expansion of the Sudbury Landfill for up to five years, on certain terms and conditions, was appealed to the Divisional Court by the proponent and the Ministry of Environment and Energy.

In September 1995, the Divisional Court ruled that although the Board has the authority to require the Director to impose terms and conditions in respect of an application under Part V of the *Environmental Protection Act*, it does not have the authority to impose conditions that require the proponent to take steps to divert waste from the landfill through systems designed to reduce, re-use or re-cycle waste.

NIAGARA ESCARPMENT HEARING OFFICE

The Niagara Escarpment Hearing Office conducts public hearings on appeals from development permit application decisions of the Niagara Escarpment Commission. Appeals are filed by either the development permit applicant or neighbouring property owners.

The Niagara Escarpment Hearing Office also conducts public hearings on Niagara Escarpment Plan Amendment applications. These Plan Amendment hearings are usually site specific.

Hearing Officers are assigned to conduct development permit appeal and Plan Amendment hearings. They prepare written reports to the Minister of Environment and Energy summarizing the evidence presented and their recommendations for the disposition of the appeal. In development permit appeal cases the Minister

then makes the final decision. For plan amendments, the report goes to the Niagara Escarpment Commission, then to the Minister and to Cabinet.

The Niagara Escarpment Hearing Office is located in the Environmental Assessment Board offices. Members of the Environmental Assessment Board are assigned by the Minister, on a case by case basis, as Hearing Officers.

In 1995, the Niagara Escarpment Hearing Office received 62 development permit appeals and conducted 1 Plan Amendment hearing. Of these appeals, 52 hearings were held by hearing officers, one went to a joint board hearing, 12 were withdrawn and 1 was postponed.

*The Niagara
Escarpment
Hearing Office
received 62
development
permit appeals*

For further information or material,
please call or write:

Environmental Assessment Board
#1201 - 2300 Yonge Street
P.O. Box 2382
Toronto, Ontario
M4P 1E4
(416) 484-7800

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ENVIRONMENTAL ASSESSMENT BOARD

ANNUAL REPORT
1996 - 1997



ENVIRONMENTAL ASSESSMENT BOARD
ANNUAL REPORT
TO MARCH 1997

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CHAIR'S MESSAGE

The past year has brought significant change for the Environmental Assessment Board, and for the environmental assessment process as a whole. Amendments to the *Environmental Assessment Act* and task force recommendations about the administrative justice system were the two initiatives that will have the greatest effect on the Board's future.

Amendments to the *Environmental Assessment Act* were proclaimed on January 1, 1997. One of the most notable changes for the Board includes a potential mediation role on terms of reference submitted by a proponent, or mediation on the merits of an undertaking. Terms of reference setting out requirements for the particular environmental assessment must be developed by proponents at an early stage in their planning. Consultation with the affected public is required, and mediation may become necessary at that stage in the process. Mediation on the merits would come later, but the Board might be designated as the mediator in both situations.

A significant change for the hearing process is the potential for limited referrals by the Minister, who may refer either a whole application to the Board for a decision, or only a matter that relates to the application. The Minister also has the authority to limit the time during which the Board is required to hold a hearing and make a decision.

From a non-legislative perspective, one of the defining events for the Board this year was the *Report on Restructuring Regulatory & Adjudicative Agencies*, prepared by the Government's Task Force on Agencies, Boards and Commissions and released in February, 1997. Bob Wood, the Chair of the Task Force, noted that the "[report] sets out significant cost-saving ideas by recommending the consolidation of a large number of highly specialized agencies into groupings that share a broader base of expertise."

One of the specific recommendations, accepted by Cabinet, was that the Environmental Assessment Board and the Environmental Appeal Board be consolidated. We are presently in the process of implementing that recommendation.

In the longer term, the Task Force recommended that the possibility of further consolidation with a new Property and Planning Tribunal [comprised of the Ontario Municipal Board, the Board of Negotiation, and the Assessment Review Board] be explored.

The tribunal community as a whole will be affected by several recommendations of more general application. Sector-wide recommendations on hearing procedures, delivery of shared services, and accountability and performance measures, are being further developed by working groups comprised of government officials, agency representatives and external advisors.

The need for a "major restructuring to meet the government's goal of providing a more streamlined, responsive and efficient administrative justice system" was also advocated by the Task Force as part of a longer term vision. This would mean, among other things, that all agency chairs would be accountable to a single minister for the administrative performance of their agencies and for meeting performance standards for customer service and efficient operation. Standardization of hearing procedures, to the extent possible, was also proposed.

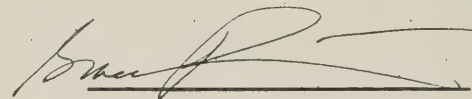
All of this forms the background for changes at this Board.

Last year I reported that we were revising our costs guidelines to achieve greater predictability and consistency in costs awards. With the help of our Client Advisory Committee, these were developed, approved, and released.

We will be reviewing all of our processes and procedures with the Appeal Board in order to develop common procedures, keeping in mind government objectives of simplification and speed. This does not mean that we intend to sacrifice a conscientious review of the environmental implications of projects on which hearings are held. That public review of environmental effects is the purpose for which the Board was created, and all of the Board members are acutely aware of that responsibility.

One of the unstated trends in this age of restraint is that, where there is a government discretion to refer or not to refer an undertaking for a hearing, there will be no referral unless a public review is manifestly necessary. We therefore cannot expect the complexities of our *Environmental Assessment Act* and *Environmental Protection Act* hearings to diminish. Complexity and controversy are what necessitates a public hearing rather than an internal ministry review.

I anticipate that the challenges of our amended legislation, our consolidation with the Appeal Board, and our process and procedural review will be met thoughtfully and well. As always, the protection, conservation and wise management of the environment will be the goal to which all of these efforts are directed.



Grace Patterson

BOARD MEMBER BIOGRAPHIES

BOARD CHAIR

GRACE PATTERSON

- ▣ Board Chair since February 1990
- ▣ joined the Board as a Vice Chair in 1986
- ▣ practised environmental law with the Canadian Environmental Law Association from 1978 to 1986
- ▣ served on the Science Advisory Board of the International Joint Commission and on the Canadian Environmental Assessment Research Council
- ▣ was a special lecturer on environmental law at Queen's University Law School from 1985 to 1990.

FULL-TIME VICE CHAIRS

PAULINE BROWES

- ▣ appointed in October 1995
- ▣ received Bachelor of Arts (Political Science) from York University, Toronto in 1979 and holds an Elementary Teaching Certificate from Toronto Teachers' College (1959)
- ▣ Member of Parliament from 1984 to 1993; Cabinet Minister and Privy Councilor (1991 - 1993); Minister of Indian Affairs and Northern Development (1993); Minister of State - Environment (1991 - 1993)
- ▣ Commissioner and Appeal Commissioner, Residential Tenancy Commission, Government of Ontario (1981 - 1984)
- ▣ Committee Member, Chiropractic Review Committee, Government of Ontario (1976 - 1981)

DAVID EVANS

- appointed in July 1992 as a part-time member, then in November 1994 became full-time Vice Chair
- received his Bachelor of Arts (Anthropology) from McMaster University and his Master of Arts (Sociological Anthropology) from the University of Calgary
- experienced environmental mediator, facilitator and trainer, who has spoken widely on issues related to public consultation and community affairs
- former mediation and advocacy consultant
- Niagara Escarpment Hearing Officer since July 1992
- former Manager, Community Affairs, Ontario Ministry of the Environment, responsible for supporting the implementation of the Ministry policy on public consultation including developing consultation training materials for Ministry staff

LEN GERTLER

- appointed to the Board May 1990
- Distinguished Professor Emeritus, University of Waterloo, and a Fellow of the Canadian Institute of Planners
- combines an interest in planning, development, and environmental management in both an urban and regional context in Canada and abroad
- foreign assignments include work in Southeast Asia and the Caribbean for United Nations agencies and CIDA
- author and editor of several books on environmental and planning issues

ANNE KOVEN

- appointed to the Board in April 1987
- holds a Master's degree in Public Administration from Queen's University
- former Research Director of the Upper Ottawa Landfill Site Study, commissioned by the Ministry of Health
- experience in the mining industry and with the Ontario Advisory Council on Occupational Health and Safety

ALAN D. LEVY

- appointed to the Board in May 1990
- has a B.A. and an LL.B. from the University of Toronto
- practised law in the area of litigation, appearing before both courts and tribunals
- one of the founders of the Canadian Environmental Law Association, and a member of its Board of directors for 20 years
- cross-appointed as a member of the Ontario Environmental Appeal Board and as a Niagara Escarpment Hearing Officer

ELIE W. MARTEL

- appointed to the Board in March 1988
- formerly a teacher and an elementary school principal, prior to his election to the Legislative Assembly in 1967
- served as the NDP member for Sudbury East from 1967 to 1987, and as House Leader for his party from 1978 to 1985
- author of two major reports on health and safety in the workplace

LINDA PUGSLEY

- joined the Board as a part-time member in July 1992 and became a full-time Vice Chair in September, 1994
- background in nursing and citizen participation
- served as Alderman on Burlington City Council from 1978 to 1992, where she concentrated on planning and development, strategic planning, environmental management, and administration and finance
- served on the Municipal Advisory Committee of the Niagara Escarpment Commission, Five-Year Review

JIM ROBB

- appointed to the Board in 1990
- holds degrees in Science and Forestry and a Commercial Pilot's Licence
- past Chairman of Save the Rouge Valley System, and worked on watershed conservation issues
- previously owned and operated an urban tree care business
- has written for various publications and his photographic credits include the cover of the Crombie Royal Commission Report, *Watershed*

PART-TIME MEMBERS

OM BHARGAVA

- appointed to the Board in 1995
- President of Omtex Inc., which provides consulting services in the fields of Analytical Chemistry and Pollution Prevention and Treatment Technologies
- M.Sc., D.I.C., Imperial College, London University, U.K.
- Supervisor of Corporate Analytical Chemistry, Stelco Inc. (1963-91); Research Chemist, Alcan Aluminium Ltd. (1960-63)
- senior research scientist under contract at the Wastewater Technology Centre (Environment Canada)
- has provided expertise to the international steel community, including the International Standards Organization and the American Society for Testing Materials
- author of 50 technical publications, also a recent major Environmental Report on "Waste Management and Pollution Prevention Opportunities in the Iron & Steel Industry"
- leader of twelve overseas Canadian delegations to the International Standards Organization committee meetings
- Fellow of the Chemical Institute of Canada and of ASTM

MARK DOCKSTATOR

- appointed to the Board in 1994
- has a doctorate in law from Osgoode Hall Law School and B.Sc. from University of Waterloo
- expert on aboriginal rights
- President of the Aboriginal Research Institute
- mediator for the Indian Claims Commission, and has performed various roles for the Royal Commission on Indian Land Claims
- taught part-time at the Faculty of Environmental Studies at York University

JOHN W. DUNCANSON

- became a Hearing Officer under the Niagara Escarpment Planning and Development Act in 1975, and was cross-appointed to the Board in 1991
- B.A. and Business Certificate from the University of Toronto
- formerly employed with Bell Telephone Company
- former Director of the Department of Alumni Affairs at the University of Toronto

LEONORE FOSTER

- appointed in May 1995
- Municipal Councillor for Pittsburgh Township, 1988 - 1994; area of specialisation: Waste Management, Costs Management and Planning
- Board Member, Cataraqui Region Conservation Authority, 1986 - 1994; Chair, Conservation Areas and Community Relations Board, 1987 - 1994
- Board Member, Kingston Area Recycling Corporation, 1988 - 1995; President 1992 - 1994; Vice-President, 1990 - 1992; Chair, Kingston Area CFC Committee, 1992 - present; Editor and co-author of the *Cassandra Report* on fluorocarbons, 1993; co-author of the *First to Fifty* on waste reduction, 1991
- Winner of the Recycling Council of Ontario's Waste Minimization Award, 1994, in the category of "Outstanding Individual Adult"

MYRON HUMENIUK

- appointed in 1995
- obtained B.Sc. in Environmental Sciences in 1975 and M.Sc. in Fisheries Ecology in 1980, from the University of Toronto
- 20 years of experience in environmental management
- has participated in over 60 environmental impact assessment projects
- worked internationally in countries such as France, Greece, India, Mexico, Pakistan and the United States
- active member of the American Fisheries Society; currently Secretary-Treasurer of the International Fisheries Section and President-elect of the Native Peoples' Fisheries Section
- served as a member of the steering committee of the First World Fisheries Congress, and co-editor of the proceedings

KEITH LEWIS

- appointed in 1992
- currently Director of Environmental Programs for the North Shore Tribal Council in Blind River, and a member of the Band Council of the Serpent River First Nation
- participated in environmental assessment hearings at both the federal and provincial levels on behalf of groups like the Union of Ontario Indians and North Shore Tribal Council
- has provided advisory and advocacy services to both the Union of Ontario Indians and the Chiefs of Ontario
- provided services in the area of public consultation, management, and administration to the North Shore Tribal Council and others

JOHN MCCLELLAN

- appointed Hearing Officer under the Niagara Escarpment Planning and Development Act in 1989 and cross-appointed to the Board in 1991
- geographer, involved in land use matters for 35 years
- former Executive Director of the Prince Edward Island Land Use Commission

DON SMITH

- appointed in 1995
- graduated from Lakehead University (B.A. Sociology)
- worked as a high school teacher, journalist, executive director of social planning council and research assistant for MP's office
- served two terms on Thunder Bay city council
- served with various environmental organizations:
 - President, Environment North (environmental advocacy group)
 - Board, Thunder Bay 2002 (Green Communities Initiative Group)
 - Member, Thunder Bay Chamber of Commerce Environment Committee
 - Member, Lake Superior Forum (bi-national advisory committee to governments regarding zero discharge of toxic chemicals to Lake Superior)
 - Steering Committee, Ontario Environment Network
 - Board, Lakehead Region Conservation Authority
 - Editorial Board, Lake Superior Alliance Newsletter

CHANGES IN MEMBERSHIP

Jim Robb completed his final term with the Board at the end of July 1996, and Anne Koven and Elie Martel left the Board in January 1997 and March 1997 respectively. Each of these Vice-Chairs made significant contributions to the Board's work.

John Duncanson and John McClellan completed their terms as part-time Board members and Niagara Escarpment Hearing Officers at the end of December 1996. Both were the sources of much wisdom with respect to the Niagara Escarpment legislation and the Plan. Their leadership in this area has been greatly appreciated by members of the Environmental Assessment Board.

LEARNING PROGRAM

During the past year, the Board has continued an active learning program. The broad goal of the program is threefold:

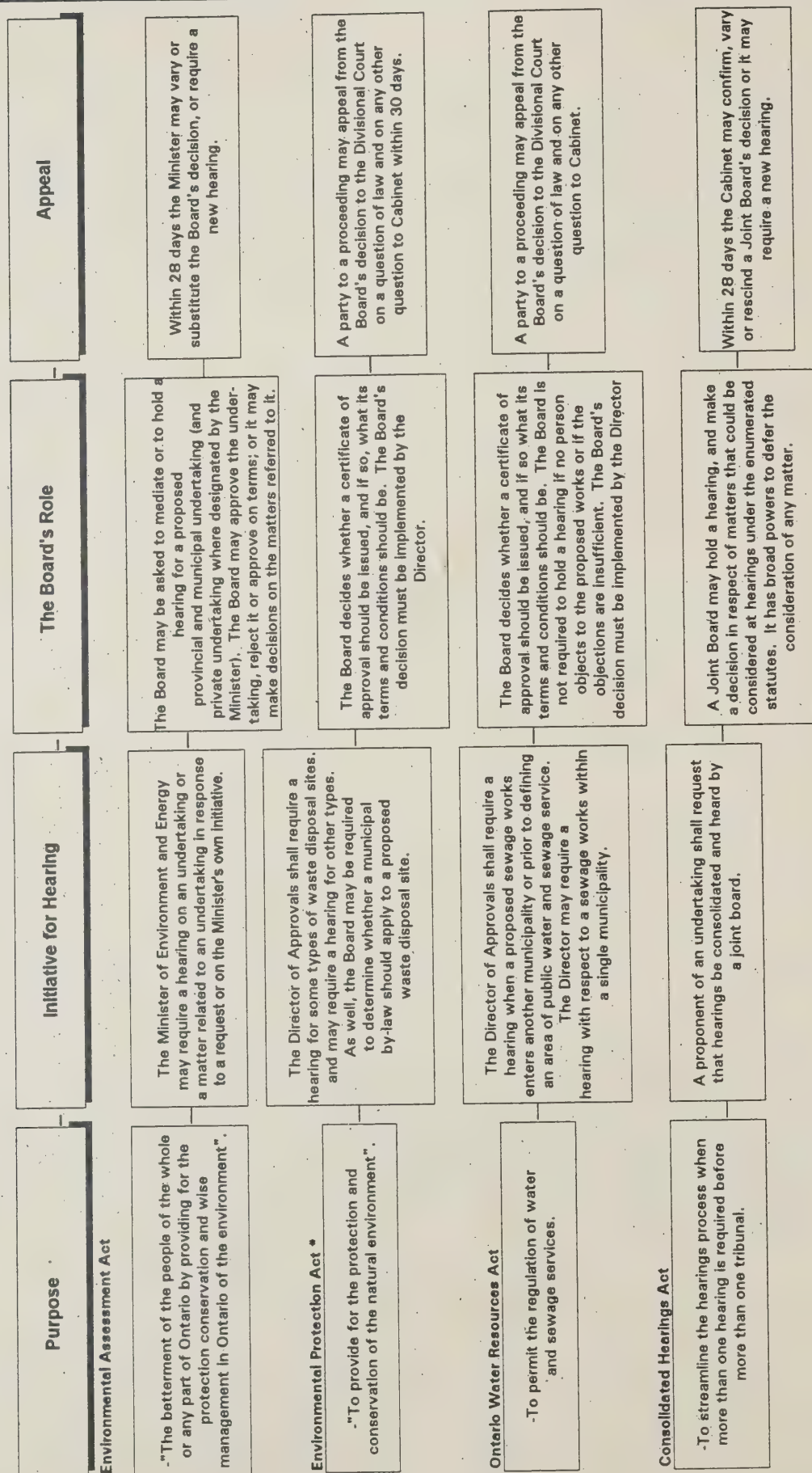
1. To explore, in some depth, the issues and knowledge areas that underlie the matters that come before the Board;
2. To reflect on the Board's hearing experience, and to engage in dialogue and exchange among Board members and invited speakers on the implications of the Board's hearing process and decisions; and
3. To keep abreast of new and evolving policy initiatives that provide the context for the work of the Board.

These purposes have been pursued mainly through a series of workshops and seminars. Examples of the first theme, *exploring issues and knowledge areas*, were the sessions on social impact assessment, and occupational health and safety. The second theme, *dialogue on the hearing process*, was pursued through sessions on monitoring and implementation of Board decisions, and alternative dispute resolution. The third theme, *keeping up with policy initiatives*, was explored, for example, in sessions on the amendments to the *Environmental Assessment Act*, and inter-jurisdictional harmonization.

The Board has been fortunate to have the involvement in its learning program of senior government administrators, both provincial and federal, leading scholars in their respective fields, and experienced practitioners. Now, after about five years of a sustained learning program, the Board's sessions have become, to a degree, an acknowledged forum where some of the main "actors" in the environmental decision making process, as well as those who play an important supportive role, can meet and learn from each other to their common advantage.

Plans for the 1997-98 Program are unfolding. Some prospective topics are the exploration of guidelines to improve the effectiveness of public liaison committees; a consideration of the code of professional and ethical responsibilities, formulated by the Society of Ontario Adjudicators and Regulators; a research report of a University of Toronto group on "follow-up in environmental assessment", based on the experience of the Halton Region Landfill; and a look at some relevant international experience in the design and implementation of systems of environmental assessment.

Overview of the Relevant Legislation



DECISION SUMMARIES

FISCAL YEAR 1996 - 1997

APPLICANT: JAMES OVERHOLT

The Land Division Committee of the Regional Municipality of Niagara approved an application by James Overholt to sever a parcel of 31 acres from a lot of approximately 65 acres located in a zone of the Niagara Escarpment Plan designated as an "Escarpment Protection Area". At the time the Niagara Escarpment Plan was adopted in 1985 each of these parcels was an "existing lot of record". Subsequently, Mr. Overholt became the owner of both parcels and as a result, by operation of law, the two lots became one lot. The Niagara Escarpment Commission appealed this decision.

The Niagara Escarpment Commission refused to grant Mr. Overholt a development permit to construct a single-family dwelling on the proposed severed lot. Mr. Overholt appealed this decision.

ISSUE: Was the proposed severed lot an "existing lot of record" within the meaning of the Niagara Escarpment Plan, or should the proposed severance be governed by the Niagara Escarpment Plan's policy respecting the creation of new lots?

DECISION: A Joint Board hearing was held on March 26, 1996. The Joint Board held that when the two "existing lots of record" inadvertently merged, a new lot was created. As a result, the Joint Board allowed the NEC's appeal and it dismissed Mr. Overholt's appeal of the NEC's decision.

RELEASED: April 24, 1996 [CH-95-01]

APPLICANT: TOWNSHIP OF STEPHEN - MUNICIPAL LANDFILL SITE

The Township of Stephen applied for an amendment to its Provisional Certificate of Approval for a five-year interim expansion of its landfill site. The Ministry of Environment and Energy did not oppose this application after the Township and the Ministry had agreed upon a draft Certificate of Approval. Only one person, a neighbour, sought and obtained status to raise concerns and make submissions. Given the limited number of public concerns and the desire to save time and money, the Board held a written hearing with the consent of the parties.

ISSUES: Concerns were raised including the landfill's impact on off-site groundwater quality and the appropriate amount of waste to be deposited at the site over the five-year period.

DECISION: The Board approved the application and the draft Certificate of Approval, however the maximum increase in site capacity was limited to 45,000 m³ rather than the 58,000 m³ requested by the Township.

RELEASED: May 28, 1996 (Decision) and June 25, 1996 (Reasons for Decision)
[EP-95-02]

APPLICANT: COUNTY OF NORTHUMBERLAND - WEST NORTHUMBERLAND
LANDFILL SITE

As noted in last year's Annual Report, the Board ruled in a preliminary phase of this hearing that there were serious evidentiary deficiencies in the County's EA in respect of its application for approval of a new landfill site. On March 15, 1996 the County advised the Board that it intended to withdraw from this hearing. The other parties argued that leave of the Board was required.

ISSUES: Did the County have the authority to unilaterally withdraw from this hearing?
If not, should the Board grant leave to withdraw?

DECISION: The Board found that the County required the leave of the Board to withdraw from the hearing because the hearing had commenced. Further, the Board refused leave to withdraw because there was evidence to suggest that the County intended to proceed with the undertaking. However, the Board decided to defer the matter to another Joint Board to be constituted if and when the County decides to proceed with the undertaking.

RELEASED: June 13, 1996 [CH-94-02]

APPLICANTS: GUSTAV GULMAR AND MARIA GULMAR

The Land Division Committee of the Regional Municipality of Niagara dismissed the applicant's request to sever a one acre lot (to be used as a farm retirement lot) from their 35.59 acre farm. The Niagara Escarpment Commission also refused to grant a development permit for a one storey dwelling on the one acre lot. Both decisions concluded that the applicants' proposal conflicted with the New Lots Policy in the Niagara Escarpment Plan which permits a farm retirement lot in the Escarpment Rural Area where no more than one lot has been severed from the original township lot and the

applicant has farmed the land since June 12, 1985. The applicants appealed both decisions. A Joint Board hearing was held on August 27, 1996. It was admitted that this township lot had already been severed six times, and that the applicants had farmed this property since May 6, 1986.

ISSUE: Should the Board apply the New Lots Policy found in the Niagara Escarpment Plan?

DECISION: The Joint Board held that the applicants had not provided any evidence that would justify a departure from a strict reading and application of the New Lots Policy. Accordingly, both appeals were dismissed.

RELEASED: September 16, 1996 [CH-96-01]

APPLICANT: ICI CANADA INC.

ICI Canada Inc. applied for approval, under the *Ontario Water Resources Act* and the *Planning Act*, to construct a sewage works comprised of a piping and pumping facility at its former fertilizer plant near Courtright, Ontario that would discharge 3.4 million cubic metres of treated process water (contained in ponds) into the St. Clair River over a 4½ year period. The Walpole Island First Nation opposed this application on the basis that the proposed discharge could put its way of life and health at risk.

ISSUES: The issues considered at this hearing included the following: Would the discharge conform with government water quality policies and guidelines? Would the discharge pose a significant risk to human health or the ecosystem?

DECISION: The Board found that the proposed discharge would conform with the applicable legislation and policies. The Board also found that those parties opposed to the discharge had not introduced sufficient technical evidence to suggest, beyond speculation, that this discharge would cause harm to the St. Clair River, the downstream ecosystem, or the public that use the River and its resources.

The Board approved the controlled discharge of the process water from the sewage works once it had been treated in the manner prescribed by the conditions of approval. Amongst other things, the conditions of approval require the discharged water to satisfy specific water quality standards imposed.

RELEASED: September 27, 1996 [CH-95-02]

APPLICANT: GENERAL ELECTRIC CANADA INC./ ELI ECO LOGIC INTERNATIONAL INC. (MOBILE PCB DESTRUCTOR)

General Electric Canada Inc. and Eli Eco Logic International Inc. applied for Certificates of Approval to treat PCB waste material (primarily excavated soil) stored at a former GE manufacturing facility in Toronto. A hearing was held under subsection 30(1) of the *Environmental Protection Act*. A preliminary hearing was held on April 24, 1996.

Three intervenor groups (Great Lakes United/Greenpeace, the Bloor-Junction Neighbourhood Coalition Inc., and the GE Task Force Residents) were granted party status by the hearing panel. The three groups were satisfied with the technical merits of the proposal and reached an agreement with the proponents on the terms and conditions under which the destruction of the PCB waste material would proceed.

ISSUES: Should the Board accept the agreement of the parties having regard to its' *Protocol for Consideration of Agreements Among Parties*?

DECISION: The Board reviewed the evidence submitted by the parties. The Board found that the agreement met the requirements of the *Environmental Protection Act* and, consequently, approved the application subject to the agreed-upon terms and conditions. As well, the Board revised the terms and conditions to expand the role of the Community Liaison Committee.

RELEASED: November 25, 1996 [EP-96-01]

APPLICANT: CALEDON SAND AND GRAVEL INC. - PROPOSED GRAVEL PIT

Caledon Sand and Gravel Inc. operates a 228-hectare gravel pit in the Town of Caledon. It sought approval, under the *Aggregate Resources Act*, the *Niagara Escarpment Planning and Development Act*, and the *Planning Act*, to extend its gravel pit operation by an additional 80 hectares. Preliminary hearings were held on February 13, 1996, April 25, 1996 and October 3, 1996. To address the concerns identified in these pre-hearing discussions, the applicant modified its' application. As a result, several parties such as the Niagara Escarpment Commission, the Ministry of Natural Resources, the Region of Peel and the Town of Caledon either supported the application or indicated that they would not oppose the application. One adjacent landowner remained opposed to this application largely on the basis that there was no need for expansion of the quarry at this time. The hearing was held on October 16, 1996 and October 22, 1996.

- ISSUES:** The issues raised by this application included hydrogeology, hydrology, noise and dust, land use planning, the need for this expansion and compliance with the Niagara Escarpment Plan.
- DECISION:** The Board granted the approvals requested by the applicant. The Board was satisfied that the agreed-upon terms and conditions would carefully monitor, and if necessary, mitigate the condition of the groundwater and surface water.
- RELEASED:** February 4, 1997 [CH-94-06]

WATERDOWN URBAN BOUNDARIES

- APPLICANTS:** The issue of the future urban boundaries of the Waterdown urban area in the Town of Flamborough was brought before a Joint Board under the *Consolidated Hearings Act* as a result of referrals of amendments of the Hamilton-Wentworth and Town of Flamborough Official Plans, under the *Planning Act*, and of amendments of the Niagara Escarpment Plan under the *Niagara Escarpment Planning and Development Act*. The main initiators were two landowners: Upcountry Estates and Paletta International Corporation. As the hearing process unfolded, other landowners came forward, including a third major group, North Waterdown.
- ISSUES:** Land use was the central issue in this hearing. What lands should be designated Urban to accommodate the forecasted growth of the Waterdown urban area? This matter, in turn, was affected by other issues: economic, servicing, transportation, subwatershed, and compatibility with the landscape of the Niagara Escarpment.
- DECISION:** The lands of the major landowners were placed in a Development Holding designation, with the proviso that they will be designated Urban when two major conditions are fulfilled: (1) with respect to an essential sanitary sewer diversion pipe, an environmental assessment and a binding financial agreement among benefitting landowners and the Region; and (2) an environmental assessment for a master road system with a view to determining a valid alignment for a Highway 5 by-pass. The Board deferred to Flamborough Council the responsibility to decide when these conditions have been met. The Board's decision has been appealed to Cabinet by Paletta International Corporation and Upcountry Estates.
- RELEASED:** February 18, 1997 [CH-95-03]

NIAGARA ESCARPMENT HEARING OFFICE

The Niagara Escarpment Hearing Office conducts public hearings on appeals from development permit application decisions of the Niagara Escarpment Commission. Appeals are filed by either the development permit applicant or neighbouring property owners.

The Niagara Escarpment Hearing Office also conducts public hearings on Niagara Escarpment Plan Amendment applications. These Plan Amendment hearings are usually site specific.

Hearing Officers are assigned to conduct development permit appeal and Plan Amendment hearings. They prepare written reports to the Minister of Natural Resources (this function was transferred to the Minister from the Minister of Environment and Energy in March 1997) summarizing the evidence presented and their recommendations for the disposition of the appeal. In development permit appeal cases the Minister then makes the final decision. For plan amendments, the report goes to the Niagara Escarpment Commission, then to the Minister and Cabinet makes the final decision.

The Niagara Escarpment Hearing Office is located in the Environmental Assessment Board offices. Members of the Environmental Assessment Board are assigned by the Minister, on a case by case basis, as Hearing Officers.

In the 1996-97 year, the Niagara Escarpment Hearing Office received 57 development permit appeals and conducted 3 Plan Amendment hearings. Of these appeals, 39 hearings were held and 18 were withdrawn.

These hearings have, in various ways, reflected as an underlying theme the purpose of the Niagara Escarpment Plan, namely "to provide for the maintenance of the Niagara Escarpment and land in its vicinity substantially as a continuous natural environment, and to ensure only such development occurs as is compatible with the natural environment".

Specifically, the issues addressed in 1996-97 included:

Water Resources: quality and supply as affected by ponds, test drilling, or development near aquifers and artesian wells.

Residential Compatibility: with the Escarpment environment, as affected by siting; access; landscaping; contours, tree removal and planting; setbacks; and the location of septic systems.

Recreation/Resort Development: compatibility of active recreation, involving ski trails, lodges and hotels with the maintenance of the Escarpment environment for passive recreation: the quiet enjoyment of Nature's wonders.

Trail Development: balancing the public interest in access to the amenities of the Escarpment with concerns of nearby residents with the possibility of noise, pollution, harassment and invasion of privacy.

INTERVENOR FUNDING DECISIONS

The Intervenor Funding Project Act expired on April 1, 1996. Therefore the Board no longer conducts funding hearings. The following is a description of the only funding decisions in 1996/97. These hearings were held because notice of the hearing had been given before the legislation expired.

**APPLICANT: PCB TREATMENT - GE CANADA (ECO LOGIC) FUNDING
PHASE I**

Three intervenor groups (Great Lakes United/Greenpeace, the Bloor-Junction Neighbourhood Coalition Inc., and the GE Task Force Residents) were granted party status by the hearing panel. General Electric Canada Inc. did not object to being named as the funding proponent. Since the hearing panel determined that the issues submitted by the parties were not clear enough, it recommended that the funding process be conducted in two parts. The first part involved the proponents answering interrogatories posed by the intervenors, following which the intervenors would refine their issues. A second funding hearing would consider funding for issues to be addressed at the hearing.

ISSUES: The main issue before the funding panel was whether the two community groups, the Bloor-Junction Neighbourhood Coalition Inc. and the GE Task Force Residents, would receive intervenor funding.

DECISION: The Board directed the Blood-Junction Neighbourhood Coalition Inc. and the GE Task Force Residents to explore how they might co-operatively advance their similar interests at the hearing and to prepare a single funding application. The Board approved a small part of the budget submitted by each of the three intervenors to cover consultants' fees and legal fees.

RELEASED: May 24, 1996. [EP-96-01(F)]

**APPLICANT: PCB TREATMENT - GE CANADA (ECO LOGIC) FUNDING
PHASE II**

This second phase of the funding was held on June 26, 1996. The parties settled most of the funding issues and related amounts. The maximum funding for the local groups for both legal and consulting fees and

disbursements was \$68,988.00. Great Lakes United/Greenpeace sought funding to retain an expert to address whether the emission/release/residue standards were adequate.

ISSUE: Should funding be granted to determine whether provincial regulatory standards were adequate to protect the public?

DECISION: The Board denied the additional funding sought on the grounds that there was little evidence to suggest that the existing standards were unacceptable.

RELEASED: July 5, 1996 [EP-96-01(F)]

COSTS DECISIONS

At the conclusion of the hearing process, the Board is often asked to adjudicate on applications for costs. In some long hearings, interim costs may also be awarded.

Parties are encouraged to discuss and settle their costs requests wherever possible. In many cases, no Board order is necessary. In others, the Board may issue a consent order. In cases where no agreement can be reached, the Board will receive written submissions, sometimes hold a hearing, and then determine the costs payable.

The following cost applications were considered and settled through Board orders during the 1996-1997 fiscal year:

APPLICANT: **ARMBRO INC. - PROPOSED SAND AND GRAVEL PIT**

As noted in last year's Annual Report, the Board approved an application to extract 4.08 million tonnes of sand from a 67-hectare property in the Town of Caledon.

A two-day hearing was held on June 25 & 26, 1996 with respect to an application for costs submitted by Armbro Inc., Crystal Springs Inc., and three local residents who participated at the hearing.

The Board dismissed Armbro's and Crystal Spring's claims for costs, however it awarded costs to each of the three local residents to compensate them for expenses incurred, such as the cost of retaining expert witnesses and legal counsel and to compensate them for their time spent at the hearing.

RELEASED: November 25, 1996 [CH-92-05]

APPLICANT: **COUNTY OF NORTHUMBERLAND - WEST NORTHUMBERLAND
LANDFILL SITE**

As noted in last year's Annual Report the Board ruled in a preliminary phase of this hearing that there were serious evidentiary deficiencies in the County's environmental assessment in respect of its application for approval of a new landfill site. Consequently, on June 13, 1996 the Board deferred this proceeding to another Joint Board to be constituted should the County decide to proceed with this application.

Meanwhile, the Board awarded costs to the Township of Haldimand (\$43,056.59), the Brookside Environment Committee (\$24,125.32) and the Concerned Citizens of Northumberland (\$704.41). These amounts were in addition to funds granted to these parties through the intervenor funding process and an interim costs award.

RELEASED: February 7, 1997 [CH-94-02]

APPEALS TO CABINET

Although this report covers the period from April 1, 1996 to April 1, 1997, Cabinet decisions released after that date but prior to June 30, 1997 have been included in this section.

APPLICANT: STEETLEY QUARRY PRODUCTS - SOUTH QUARRY LANDFILL
CH-91-08

As noted in the Board's 1994-1995 Annual Report, this application to develop the South Quarry Landfill to receive approximately 26 million tonnes of waste over approximately a 13-year period was dismissed on March 17, 1995. An appeal to Cabinet was filed by the proponent on April 13, 1995. Cabinet issued a decision on October 30, 1996 confirming the Board's decision.

APPLICANT: ELSA GRECO
CH-95-05

As noted in last year's Annual Report, the Board refused to grant a development permit for the construction of a single family dwelling because it was not an existing lot of record nor did it meet the New Lots Policies under the Niagara Escarpment Plan. An appeal to Cabinet dated April 26, 1996 was filed by the proponent. Cabinet issued a decision on April 30, 1997 confirming the Board's decision.

APPLICANT: ARMBRO INC.
CH-92-05

As noted in last year's Annual Report, the Board approved an application to extract slightly more than 4 million tonnes of sand and gravel from a 67-hectare property in the Town of Caledon. An appeal to Cabinet dated May 1, 1996 was filed by Crystal Springs Inc. who had opposed this application. No decision has been reached.

APPLICANT: JAMES OVERHOLT
CH-95-01

As noted earlier in this Annual Report, a Joint Board held that the applicant was not entitled to a lot severance and also dismissed an appeal from the Niagara Escarpment Commission's refusal to grant a development permit for the construction of a single-family dwelling. An appeal to Cabinet dated May 7, 1996 was filed by the proponent. No decision has been reached.

APPLICANT: WATERDOWN URBAN BOUNDARIES
CH-95-03

As noted earlier in this Annual Report, a Joint Board decided various development issues related to the Waterdown Urban Boundaries on February 18, 1997.

An appeal to Cabinet dated April 28, 1997 was filed by the applicants. No decision has been reached.

APPLICANT: ICI CANADA INC.
CH-95-02

As noted earlier in this Annual Report, a Joint Board approved sewage works and the controlled discharge of treated process water into the St. Clair River. An appeal to Cabinet dated October 24, 1996 was filed by the Walpole Island First Nation. Cabinet issued a decision on April 24, 1997 confirming the Board's decision.

JUDICIAL REVIEW

COUNTY OF SIMCOE - NORTH SIMCOE LANDFILL CH-87-03

As noted in the two previous Annual Reports, a Joint Board in 1989 dismissed the County's application for approval of a landfill site in the Township of Tiny because it found that the County's site selection and site comparison processes failed to satisfy the requirements of the *Environmental Assessment Act*. The County appealed this decision to Cabinet and, in 1990, Cabinet issued an Order-in-Council which substituted the Board's decision. Cabinet ordered that the hearing be adjourned to allow the County to present further evidence to address the Board's criticisms. The hearing was recommenced in 1993 before one of the two members of the original Joint Board panel. In 1995, the Joint Board approved the County of Simcoe's application subject to certain conditions.

Certain members of the Wye's Citizens Group, that had opposed the County's application, brought an application for judicial review of the Board's 1995 decision. It was argued that the Board had misinterpreted the Order-in-Council. On March 26, 1997 the Ontario Divisional Court dismissed this application on the basis that the Board had made no error in its interpretation of the Order-in-Council.

A motion for leave to appeal this decision to the Court of Appeal for Ontario is pending.

For further information or material,
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